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ABSTRACT

This report presents the findings of research and public hearings on the development of racial isolation in Miami, Florida. Maintaining that Miami's black community is isolated from the city as a whole, and that the sense of black isolation and frustration precipitated the civil disturbances in Miami in May of 1980, the report examines the causes of black alienation and the role of public and private leadership in correcting the situation. Identified as a major influence in the development of racial alienation is the urban renewal program which pushed large numbers of blacks out of their traditional neighborhoods and into isolated and severely deteriorated areas. Other manifestations of black isolation include high unemployment and a lack of access to job training and advancement, adequate housing, the justice system, and equal educational opportunities among the city's black and minority population. It is concluded that solving Miami's problems requires a coordinated effort of public and private sectors to eliminate the underlying causes of racial isolation. Such efforts, it is maintained, should be directed toward dropout prevention; maximum school desegregation; efficient vocational and bilingual instruction; improved housing conditions; affirmative action in employment; and provision of greater access to the juvenile justice system and related services. (Author/MJL)

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ED217116

Confronting Racial Isolation in Miami

A Report of the United States
Commission on Civil Rights

June 1982

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U. S. COMMISSION ON CIVIL RIGHTS

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- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, handicap, or national origin, or by reason of fraudulent practices;

- Study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin, or in the administration of justice;

- Appraise Federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, or in the administration.

- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;

- Submit reports, findings, and recommendations to the President and the Congress.

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UNITED STATES COMMISSION ON CIVIL RIGHTS

Washington, D. C. 20425

THE PRESIDENT
THE PRESIDENT OF THE SENATE
THE SPEAKER OF THE HOUSE OF REPRESENTATIVES

Sirs:

The United States Commission on Civil Rights transmits this report to you pursuant to Public Law 85-315, as amended.

Confronting Racial Isolation in Miami is based upon Commission public hearings held in Miami, Florida after the civil disturbances in that city in May of 1980 and upon research conducted prior to, during and since the hearings.

The report examines the role of local, State and Federal governments and the private sector in the development of racial isolation in Miami. The manifestations of that isolation include high unemployment and a lack of access to job training and advancement, adequate housing, the justice system, and equal educational opportunity for the city's black population. The success with which these problems are addressed will have profound implications for the civil rights status of the residents of Miami and, perhaps, for the Nation as a whole.

The report concludes that greater commitment and a coordination of effort and resources on the part of all levels of government and the private sector in Miami will be required to make meaningful in that city our Nation's promise of equality for all. It is our hope that the findings and recommendations contained in this report will be of assistance in this regard.

Respectfully,

Clarence M. Pendleton, Jr., Chairman
Mary Louise Smith, Vice Chairman
Mary F. Berry
Blandina Cardenas Ramirez
Jill S. Ruckelshaus
Murray Saltzman

John Hope III, Acting Staff Director

PREFACE

In May 1980, Miami and the surrounding political jurisdiction of Dade County became the scene of the first major racial disturbances of the decade. Subsequent disturbances occurred in Miami and other American cities. After reviewing events in Miami, the White House Interagency Task Force on Civil Disturbance in Miami-Dade County concluded that urban tensions have not decreased since the mid-1960s.

> The underlying causes...[of] violence... exist in virtually every depressed inner city community in the country. The anger, frustration, fear and hopelessness as expressed...by the black citizens of [Miami] are identical to those documented in the report of the National Advisory Commission on Civil Disorders of 1968. 1/

Current conditions in the Nation's cities indicate that discrimination based on race and ethnicity continue to permeate and undermine the lives of the urban poor. It remains unclear whether the programs and attempted solutions of the 1960s and 1970s failed or whether those efforts were simply overtaken by unanticipated recent changes in America. Some suggest that the

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1/ White House Interagency Task Force, Report on Civil Disturbance in Miami-Dade County, Florida (1981), p. 1.

Nation treated only the symptoms of protest and unrest and failed to achieve lasting structural change. Others have charged that the efforts to produce national change were half-hearted and underfunded. The possible explanations are many, and events in Miami raise questions about the Nation's capacity to meet the challenge of its pluralistic origins.

Prompted by the civil disturbances of May 1980, the Commission undertook an investigation that focused primarily on federal laws and policies. In the process, the Commission encountered a black community, once vibrant and economically viable, that has been isolated and excluded from the explosion of economic growth occurring all around it in the last two decades. Beyond the specific findings included in this report, the Commission found that sustained displacement and exclusion from economic opportunity and mobility have resulted in a serious erosion of spirit in the black community. Where the prospects for success have continuously become dimmer, apathy has replaced drive and amibition among many of Miami's black residents. There are sufficient exceptions to this observation to indicate that the potential for the black community's economic viability remains. However, unless a racially conscious effort is made to overcome the social and economic disadvantages imposed on black Miamians and to offer them the opportunity to develop a prosperous community again, the present sense of alienation and frustration will continue to pervade black life in Dade County.

After reviewing the underlying conditions and events leading to the civil disturbances in the greater Miami community, the Commission will recommend courses of action that should be taken if other urban areas are to prevent a tragedy such as that which became known as Liberty City.

Acknowledgements

The Commission is indebted to the following staff members who participated in the preparation of this report under the supervision of Paul Alexander, Acting General Counsel and Michael C. McGoings, Assistant General Counsel; Letvia Arza-Goderich, Christopher G. Bell, Sylvia J. Eastman, Peggy Y. Massey, Susan McDuffie, Anne H. Meadows, Stephen O'Rourke, Karen Primack, Ricki L. Seidman, and Derryl D. Stewart, staff attorneys, and Laura Chin,* editor-consultant.

The report is based on public hearings held in Miami, Florida, under the direction of Paul Alexander and Michael McGoings. Staff members participating in the field investigation and hearings included James Arisman, Letvia Arza-Goderich, Christopher G. Bell, Elaine M. Esparza, Clinton M. Fried, Donald Inniss, James Karantonis, Idalia A. Morales, Rosa Morales, Stephen O'Rourke, Pamela V. Proctor, Ricki L. Seidman, Derryl D. Stewart, Carole Williams, Ana M. Dew, Mary Grose, Lorraine W. Jackson, Frances C. Lee, Sheila Lyon, DeBorah Marks* and Naomi S. Tinsley.

The Commission also expresses its appreciation to Brenda Blount, Mary Grose, Lorraine W. Jackson, Frances C. Lee and Michele Moree who provided support services necessary to the production of this report.

The field investigation and hearings were conducted under the overall supervision of Eileen M. Stein,* General Counsel. Production of the report was under the overall supervision of Paul Alexander, Acting General Counsel.

*No longer with the Commission.

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CHAPTER I — IN THE SHADOWS OF CONFLICT

The Miami-Dade Setting

The Miami-Dade County area is a relatively new metropolis that expanded primarily as a result of the resort industry. Very few families in Miami--white, black, or Hispanic--can trace their origins in the community beyond two or three generations. 2/ At the turn of the century, there were fewer than 5,000 people living in the small agricultural settlements that dotted the area. 3/ In 1896, railroads linked Miami to the rest of the country, and the population grew to 30,000 by 1920. 4/

The area's patterns of population growth usually have been cyclical: economic "booms" followed by "busts." The first major population increase occurred between 1920 and 1925, when Dade County experienced the "wildest boom" in its history. Five years of overspeculation and overbuilding, however, turned the economic prosperity into a "bust," which was aggravated by

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2/ Maurice Ferre, Mayor of Miami, testimony, Hearing before the U.S. Commission on Civil Rights, Miami, Fla., Dec. 8-11, 1980, unpublished transcript, (hereafter cited as Hearing Transcript), pp. 1141-42.

3/ Edward Sofen, The Miami Metropolitan Experiment, (Bloomington: Indiana University Press, 1963), p. 11; Nixon Smiley, Yesterday's Miami, (Miami: Seemann Publishing, Inc., 1973), p. 27.

4/ Smiley, Yesterday's Miami, p. 28.

a devastating hurricane in 1926. Miami had not yet recovered when the Depression of the 1930s arrived, and all development ceased for a period. 5/

The onset of air transportation and an organized tourist industry brought economic prosperity and growth once again. In 1935, the rest of the country was still suffering the Depression. But things were different in Miami. Tourism kept the city thriving, and the area's growth was remarkable. In the decade preceding 1940, Dade County's population almost doubled, from 172,000 to 268,000. 6/ Miami glittered as new luxury hotels rose and the ocean fronts of Miami Beach were developed.

Air travel following the Second World War stimulated the next major period of growth. The renewed tourist trade benefitted from the large-scale development of the aviation industry, the arrival of retirees and former military personnel, and widespread air-conditioning. 7/ The general

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5/ Ibid., pp. 59-60; David B. Longbrake and Woodrow W. Nichols, Jr., Miami: Sunshine and Shadows, (Cambridge, Ma.: Ballinger Publishing Co., 1976), pp. 15-17.

6/ Smiley, Yesterday's Miami, p. 107.

7/ Smiley, Yesterday's Miami, p. 108; Longbrake and Nichols, Jr., Sunshine and Shadows, p. 17.

prosperity of the area continued into the 1960s, when Miami and the Dade County area experienced an economic decline. 8/

Tourism slackened as the hotels aged, and Miami began to face stiff competition from Caribbean resorts. The downtown commercial district became blighted and decayed. 9/ The influx of Cuban refugees from the Castro revolution of 1959 and other migration strained existing schools, social services, and housing. But in the midst of this economic decline, Cuban migration began to transform the city and the county. Indeed, refugees and visitors from Central and South America have been major contributors to Miami's growth, 10/ and, for the last two decades, 70 percent of the local population growth has been Hispanic. 11/ It was this Hispanic influx that revitalized the declining city.

New Families, New Generations

While Miami is a relatively new city, blacks have lived there from its beginning. They came not as tourists, but as

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8/ See pp. 10-18, infra.

9/ Longbrake and Nichols, Sunshine and Shadows, p. 38.

10/ City of Miami, Urban Development Action Grant Application, Watson Island Development, Economic Feasibility, p. II-10-13 (April, 1979).

11/ Carlos J. Arboleya, "The Cuban Community 1980: Coming of Age as History Repeats Itself" (1980) (unpublished article in Commission files) (hereafter cited as Arboleya, The Cuban Community).

workers. The first blacks who migrated to the Miami area came from the rural South, the Bahamas, and other Caribbean nations. 12/ Coconut Grove is considered the site of Miami's first black community. "The Grove" was originally settled by lighthouse keepers, Bahamian fishermen, and numerous slaves who had come to work on plantations. 13/ By the late 19th century, Bahamians were the major source of labor in the Miami area.

The Overtown section of Miami became the economic hub of the black community. Overtown was the second oldest black community in Dade County and contained black-owned stores, restaurants, nightclubs, and other enterprises. Overtown's economic base evolved into commerce, entertainment, and servicing nearby downtown Miami. 14/ Overtown was known at various times in the past as Culmer, Central, and Colored-Town. Originally, it was a tract of land the railroad had bought to house its black laborers since restrictive land covenants and

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12/ Smiley, Yesterday's Miami, pp. 12, 14, 23; Metropolitan Dade County, Office of the County Manager, Profile of the Black Population (1979), pp. 42-43, 67; Longbrake and Nichols, Sunshine and Shadows, p. 47.

13/ Profile of the Black Population, p. 67.

14/ Ibid., p. 63.

segregationist statutes prevented blacks from obtaining housing as they migrated south to work on the railroads. 15/

As the railroad extended through Dade County beyond Miami, black settlements grew alongside its tracks. Goulds was settled at the turn of the century, and black enclaves developed in Homestead, Florida City, Perrine, and Larkins, and in rural areas along the southern path of the railroad. 16/ Northwest of Overtown, in Brown's Sub, black families bought land and constructed their own homes during the 1920s, while a preplanned city, Opa Locka, was being built further north to house the black railroad workers. 17/

Black families also moved into Liberty City, south of Brown's Sub. 18/ The Liberty City area was developed after the Second World War as a relatively low density site for public housing. At that time, neither Brown's Sub nor Liberty City was exclusively black. As late as 1950, more than 50 percent of the residents of Brown's Sub were white. 19/ As both

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15/ Chas. S. Thompson, "The Growth of Colored Miami," The Crisis, vol. 49 (March 1942), p. 83.

16/ Profile of the Black Population, pp. 71-79.

17/ Ibid., pp. 51, 55.

18/ Ibid., p. 56.

19/ Ibid., p. 52.

Liberty City and Brown's Sub expanded and merged into an area now known as Model Cities, however, the population became predominantly black. 20/ Other areas with concentrated black populations include New Liberty City, Lake Lucerne, Carol City, and Richmond Heights. 21/

The heydays for Overtown and the black community were in the 1940s. Although it could not compare with affluent white Miami, black Miami nonetheless boasted 70 churches as well as social and civic associations. 22/ Black businesses prospered, and it became traditional for blacks to patronize black-owned businesses. 23/

Overtown was segregated from the rest of the social and economic life in Miami. 24/ Miami was a prime vacation spot not only for white tourists, but also for the country's leading

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20/ Ibid., p. 55. The name derives from the Great Society program of the 1960s. Longbrake and Nichols, Sunshine and Shadows, p. 47.

21/ Profile of the Black Population, pp. 47-48, 74.

22/ Thompson, "Colored Miami," pp. 83-84.

23/ Ibid., p. 83; Stanley Ivern Sweeting, "Night Life in Miami," The Crisis, vol. 49 (March 1942), pp. 97-98.

24/ The plan that incorporated Miami in 1896 specified a segregated city. All property on the Bay and on both sides of the Miami River was reserved solely for white ownership and development, while black Miamians were restricted to three small areas away from the water. Thompson, "Colored Miami," p. 83; City of Miami Planning Department, Overtown Redevelopment black professionals. These blacks, who could not register in white-owned hotels, stayed in Overtown--along with internationally known black entertainers, who performed at hotels in which they, too, were forbidden to register. 25/

Jobs and money, at least during the tourist season, were available for the black community. 26/ As a result, black citizens in Overtown and other sections of Miami had more economic security than their counterparts in other American cities. Wages were low, however, and there were few jobs outside the service industry. Consequently, underemployment was widespread among blacks. 27/

24/ (cont.) Plan (October 1979), p. 102. During the first two decades of this century the Ku Klux Klan was an active and powerful force in Dade County. Profile of the Black Population, p. 43; Smiley, Yesterday's Miami, p. 92; Sheila Payton, "Looking Back at Being Black," The Miami Herald, Feb. 1, 1976, p. 8-G. For most of its political existence, Florida was a segregated State and Miami a segregated city. Cf. Fla. Const. Art. 12, Sec. 12 (1885) which mandated segregated schools. In the 1920s Coral Gables, an incorporated municipality in Dade County, passed an ordinance prohibiting blacks from living there, and the Miami municipal golf course was only opened to blacks in 1953. Payton, "Looking Back at Being Black," p. 8-G. As late as 1965 blacks had to carry identification cards. Profile of the Black Population, p. 43.

25/ City of Miami Planning Department, Overtown Redevelopment Plan, p. 104.

26/ Thompson, "Colored Miami," p. 84; Sweeting, "Night Life in Miami," p. 97.

27/ Thompson, "Colored Miami," pp. 84-85.

Overtown continued its relative stability during the 1950s, but life was to change in the subsequent decade. By 1965, much of Overtown had been razed for highway construction and urban renewal. The same forces that destroyed or altered the physical structures also weakened the social underpinnings that had kept the community stable. Businesses folded, churches closed, and many Overtown residents were forced to leave. 28/

In contrast to the bustling community of less than a generation ago, Overtown today sits grimly beneath elevated highways. A few small businesses struggle among the abandoned and boarded up buildings. Vacant lots, regiments of unemployed workers, and overcrowded, rundown housing are all that remain of Overtown. 29/

Many of the thousands of black families displaced by urban renewal in Overtown moved to the previously rural Model Cities neighborhood that surrounds Liberty City. Today, Model Cities is the largest black neighborhood in Dade County and contains approximately 37 percent of the county's entire black

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28/ Dewey Knight, Assistant County Manager, Metropolitan Dade County, testimony, Hearing Transcript, pp. 761-63; City of Miami Planning Department, Culmer Redevelopment Study--Overtown, Dorsey, Wheatley; Existing Conditions (1979), p. 3; Profile of the Black Population, p. 65.

29/ Culmer Redevelopment Study, pp. 53, 55; Athalie Range, testimony, Hearing Transcript, pp. 758-60.

population. 30/ Model Cities is a severely depressed area with inadequate housing, a high unemployment rate and a pervasive sense of hopelessness and anger. 31/

In 1960, in the midst of the black community's displacement and the Miami area's general economic decline, the first wave of refugees from the Cuban revolution arrived. 32/ Since then, the growth and development of the Hispanic community has been the most striking population change in Miami. In 1980, Hispanics constituted 41 percent of the population of Dade County, up from 5.4 percent in 1960. 33/ The black population has been estimated at about 16.4 percent in 1980, a modest increase from 1960, when it was 14.7 percent of the Miami total. 34/ In addition Miami has a substantial Puerto Rican population that, according to a witness at the Commission hearing grew from approximately 10,000 in 1950 to 100,000 in 1980. 35/

30/ Profile of the Black Population, p. 45.

31/ Behavorial Science Research Corporation, Social Service Needs and Resources of the City of Miami, (Oct. 1975), p. 28.

32/ Longbrake and Nichols, Sunshine and Shadows, p. 49.

33/ Jan Feagans, Report on the Development of the Political and Program Structure of Dade County, Florida (November, 1980), p. 10 (prepared for the U.S. Commission on Civil Rights).

34/ Ibid.

35/ Alicia Baro, testimony, Hearing Transcript, pp. 67, 70.

Cuban immigrants, the major contributors to Miami's population growth in the last two decades, have presented a distinct social and economic profile. Many had been business people and professionals in their native Cuba before the 1959 revolution. 36/ Some already had connections in the Miami community. Many Cubans, who took menial jobs immediately after arrival, eventually reestablished themselves economically. For example, approximately 3,500 doctors and related medical professionals eventually revalidated their credentials and created new practices in Miami. 37/ Cubans established nearly 18,000 businesses in Miami, 38/ and some sectors of the local economy have become strongly associated with the Cuban community. About two-thirds of all local construction workers are Cuban, 39/ as are 85 percent of the workers in the local garment industry. 40/

The large Spanish-speaking population has attracted Central and South American immigrants, who feel comfortable in what has become a bilingual community. Approximately 100,000 emigres

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36/ *Working-Class Emigres from Cuba*, p. 1.

37/ [illegible]rboleya, p. 4.

38/ Ibid., p. 2.

39/ Ibid., p. 5.

40/ Ibid.

presently living in Dade County are from Venezuela, Colombia, Peru, and other Latin American countries. 41/

The Cuban migration from 1960 to 1980 had two principal effects on the demographic composition of Miami and Dade County. The primary effect was the "Latinization" of large areas of the county--predominantly in central Miami and Hialeah--within a brief time span. 42/ Many of the Cuban emigres settled southwest of Overtown in an area that became known as Little Havana. 43/ The second effect was massive suburbanization of Dade County that resulted from the immigration, as thousands of non-Hispanic whites left Miami and settled elsewhere in Dade County and in Broward County to the north. 44/

The past 5 years have been a watershed for the Miami-Dade area. As a consequence of Hispanic migration to Dade County,

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41/ Miami Herald, November 3, 1980, p. 1-B.

42/ Longbrake and Nichols, Sunshine and Shadows, pp. 38, 41-42. Hialeah is the largest incorporated suburb of Miami.

43/ Office of the County Manager, Dade County, Hispanics in Dade County: Their Characteristics and Needs (Spring, 1980), p. 4.

44/ Behavioral Science Research Institute, The Miami Race Riots of 1980: Historical Antecedents and Riot Participation (January 1981), p. 79 (prepared for the U.S. Commission on Civil Rights) (hereafter cited as BSRI, The Miami Race Riots of 1980).

non-Hispanic whites no longer constitute a majority of the county's population, although they barely remain the largest of the three ethnic groups. The black population has dropped from second to third in size. Dade County estimates, based on preliminary 1980 Census data, indicate that Hispanics now comprise 41 percent of the population, blacks 16 percent, and non-Hispanic whites 43 percent. 45/

In the spring of 1980, about 10,000 Cubans seeking to leave their homeland occupied the Peruvian Embassy in Havana. The Cuban Government dealt with this embarrassing incident by opening the port of Mariel to all wishing to emigrate to the United States. 46/ A massive flotilla organized by Cuban Americans ferried Cuban refugees from Mariel to Key West. 47/ As a result, approximately 125,000 additional Cubans immigrated to the United States in a 6 month period, with more than 86,000 arriving in one month. 48/ Various sources estimate that 60,000 to 80,000 of these new arrivals reside in Miami or Dade

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45/ Feagans, Political and Program Structure of Dade County, p. 8.

46/ Report of the Cuban-Haitian Task Force, p. A-9.

47/ Ibid., pp. 3-4.

48/ Ibid., pp. 110, A-15.

County. 49/ The new refugees, however, differ from their predecessors. Earlier refugees from Cuba were mostly white, and even if they were not middle- or upper-class themselves, they often had relatives in the United States who were. According to witnesses at the Commission hearing, many of the recent Cuban refugees appear to be non-white, unskilled, and without blood ties to American citizens or residents. 50/

The new wave of Cuban immigration into Florida sparked the resistance of non-Latin white residents to the visible transformation of Dade County into a bilingual, bicultural area of strong Latin influence, where Spanish increasingly is used in business and public transactions of all kinds. A symptom of this resistance was the overwhelming approval of an antibilingualism ordinance in the November 4, 1980 election. 51/ The ordinance prohibits the expenditure of county funds for utilizing any language other than English, or promoting any culture other than that of the United States.

49/ *Ibid.*, p. 84. These are estimated figures because the refugees arrived after the decennial census was completed.

50/ Theresa Saldise, testimony, Hearing Transcript, p. 30; Silvia Unzuta, testimony, Hearing Transcript, p. 582. *See also Report of the Cuban Haitian Task Force,* pp. 61, 81-82.

51/ *The Miami Herald*, Nov. 5, 1980, p. 11. Ibid., Dec. 19, 1980, Section 2, p. 1.

Economic Prosperity and New Conflicts

Although pressured by the recent and rapid arrival of new residents, the Miami-Dade area is enjoying marked economic growth. This prosperity has been fueled by the expanded Hispanic community and Miami's reemergence as a trade and vacation center for Central and South America.

Today, Hispanics shopping in Miami's retail stores annually spend over $1 billion. 52/ The downtown area of Miami is undergoing extensive renovation, construction projects are rising in record numbers, and real estate values spiral steadily upward. Formerly empty stores are now replete with consumer and luxury items. The longstanding white business community in Miami has shared in the economic boom and has actively solicited the support and cooperation of the Hispanic business community.

Almost every indicator shows that Dade County's economy has grown consistently faster than that of the nation as a whole. In 1956, the private sector provided 224,000 jobs in approximately 20,000 different business establishments in Dade County. 53/ Twenty-one years later, the private sector economy

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52/ Longbrake and Nichols, p. 38.

53/ U.S., Department of Commerce, Bureau of the Census, County Business Patterns: Part 6—Florida (1956), Table 3, pp. 31-33.

had added another 300,000 jobs and 18,000 establishments. 54/ The job market grew 133.4 percent, and there was a 92.2 percent increase in the number of businesses. Nationally, during the same 21-year period, the number of jobs had grown only 59.7 percent and the number of business establishments only 39.1 percent. 55/ Similarly, the wholesale and retail trade industries in Dade County added 78,131 jobs and 6,350 businesses between 1956 and 1977, 56/ increases of 103.4 percent and 89.5 percent, respectively. Nationally, jobs in the same industries grew only 65.9 percent and new establishments only 39.1 percent during the same period. 57/

54/ U.S., Department of Commerce, County Business Patterns-Florida (1977), Table 2, pp. 44-53.

55/ In 1956, 3,129,148 private establishments provided 40,692,115 jobs. County Business Patterns--U.S. Summary (1956), Table 1, p. 3. In 1977, 4,352,295 private establishments provided 64,975,580 jobs. County Business Patterns--U.S. Summary (1977), Table 1A, p. 1.

56/ County Business Patterns--Florida (1965), Table 3, pp. 31-33; County Business Patterns--Florida (1977), Table 2, pp. 44-53.

57/ In 1956, nationally 1,314,871 wholesale and retail establishments provided 10,815,671 jobs. County Business Patterns--U.S. Summary (1956), Table 1, p. 1. In 1977, nationally 1,638,454 wholesale and retail establishments supported 17,946,354 employees. County Business Patterns--U.S. Summary (1977), Table 1A, p. 1.

In the volatile construction industry, however, the national rate of growth for the period from 1956 to 1977 exceeded Dade County's rate. The number of jobs in the construction industry increased 40.9 percent nationally and 21.3 percent in Dade County, and the number of construction businesses increased 49 percent nationally and 39.3 percent in Dade County. 58/

Increases in the number of new businesses, however, do not necessarily correlate with employment opportunities. Service industry employment, which grew faster nationwide than it did in Dade County, illustrates this phenomenon. From 1956 to 1977, 10 million service jobs were added nationally, an increase of 252.1 percent, while such employment grew by 216.1 percent in Dade County. In 1956, though, the service industry was a more central part of the economy in Dade County than it was nationally. At that time, the service industry provided more than 25 percent of all private sector jobs in Dade County, while providing fewer than 10 percent of all non-governmental jobs nationally. Nevertheless, the number of businesses in this industry still increased substantially faster in Dade County than in the country. There were almost 6,300 more

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58/ These figures are based on data from County Business Patterns, 1956 and 1977.

service establishments in Dade County in 1977 than in 1956, a 112.4 percent increase. Nationally, the increase was only 77 percent. 59/

Dade County's economy not only created jobs and saw businesses established at a rate higher than that of the United States as a whole, but the county's economy also increased in revenues faster than the national economy did. In 1977, Dade County's wholesale trade industry produced sales revenues of $8.68 billion, a 374.6 percent increase from 1963. 60/ The corresponding national increase was 251.1 percent. 61/ Similarly, receipts for services and retail sales increased faster in Dade County than nationally during the same 14-year period, 62/ and payrolls for all businesses increased twice as

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59/ Ibid.

60/ U.S., Department of Commerce, Census of Business and Wholesale Trade (1963), Table 5, pp. 11-12; Bobby Russell, U.S. Department of Commerce, telephone interview, Feb. 25, 1981.

61/ Census of Business and Wholesale Trade (1963), Table 1, pp. 1-7; Census of Wholesale Trade--United States (1977), Table 1, p. 528.

62/ Based on data available from Census of Business (1963), Table 2, pp. 1-7, and Table 4, pp. 11-16; Census of Service Industries--United States (1977), Table 1, pp. 52-58; Census of Service Industries--Florida (1977), Table 4, pp. 10-29; Census of Business--Part 1 (1963), Table 2, pp. 1-7 and Table 4, pp. 11-21; Census of Retail Trade--Florida (1977), Table 1, pp. 10-80; Bobby Russell, Department of Commerce, telephone much in Dade County as nationally in the 21 years preceding 1977. 63/

The black community has been notably absent from this economic success story. 64/ By all social indicators, blacks as individuals and as a community have been excluded from the economic mainstream in Miami. Their living conditions worsened as their families were dislocated by urban renewal and highway construction.

62/ (cont.) interview, Feb. 25, 1981. Retail sales in Dade County rose 239 percent between 1963 and 1977, as compared to only 196 percent nationally, and over the same time period receipts from services rose 315 percent in Dade County and 302 percent nationally. While figures for the same period concerning the value of manufactures shipped is not available, between 1967 and 1977 Dade County realized 204 percent increase while the national increase was only 143 percent.

63/ Based on data from County Business Patterns, 1956 and 1977.

64/ Following the riots in 1980, Florida's governor appointed a citizens' committee to investigate the underlying causes of the riot. It's report noted:

> Economic growth in Dade County has been astonishing....Economically, Dade County is in a better position than elsewhere in the United States. The overall rate of unemployment is below the national average and there are fewer total unemployed in Dade County than five years ago. Yet the statistics show that this economic growth once again has passed by...[Dade County's] blacks.

Report of the Governor's Dade County Citizens' Committee (October 1980), pp. 14-15.

In 1968, while immigration was taxing Miami's economic base, the first race-related civil disturbances occurred. 65/ Compared to those in other American cities, Miami's disorders were minor, but they clearly pointed to the poor living conditions of blacks--conditions that were deteriorating. 66/

For the black community, economic stagnation was occurring at the same time that regional economic expansion was outstripping national growth. The result has been deprivation, both relative and real, for blacks. For those in the Model Cities and Overtown neighborhoods, where most of the rioting occurred in 1980, the situation is acute. Dade County blacks showed little improvement in income levels or economic

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65/ Cf. Miami Study Team of the National Commission on the Causes and Prevention of Violence, Miami Report (1969).

66/ The Special Task Force noted: "The disturbances originated spontaneously and almost entirely out of the accumulated deprivations, discriminations, and frustrations of the black community in Liberty City, which are similar to those of urban black communities throughout the United States, exacerbated by the following special local circumstances:

(a) Loss of local jobs by blacks over the prior several years to Cuban refugees.

(b) Failure of the Dade County business community during the summers of 1967 and 1968 to provide a sufficient number of jobs for black youths despite widely publicized promises to do so.

(c) Tensions of many years standing between the Miami black community and the Miami police, which had sharply increased in recent months."

Ibid., p. viii.

stability, and in many neighborhoods, actually fell further behind. Not only did blacks lose ground relative to the white population, which showed overall large gains during the decade, but they also lost ground compared to the newly-arrived Cuban refugees.

This relative shift is shown dramatically when the economic conditions of Dade County's Hispanic and black populations are contrasted. For example:

-- In 1960, the median family incomes of Hispanics (predominantly Puerto Ricans) and blacks were $3,777 and $3,367, respectively. Both were well below the Dade County median of $5,348. By 1970, median family income had increased to $8,091 for Hispanics, $5,983 for blacks, and $9,245 for Dade County as a whole. Although the Hispanic median had increased substantially in relation to the county average, the black median remained well below average. 67/

-- In 1960, black and Hispanic unemployment levels were both well over the Dade County average of 5.6 percent; the level was even higher for Hispanics (8.0 percent) than for blacks (7.1 percent). By 1970, overall employment had improved for Dade County, but black unemployment levels were still more than 25 percent higher than the county average. By contrast,

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67/ BSRI, The Miami Race Riots of 1980, Table 8, p. 27.

Hispanic unemployment had decreased remarkably and was actually lower than the Dade County average. 68/

Racial disparity in unemployment rates continued during the past decade. In 1979, with the national unemployment rate at 5.8 percent, 69/ a county study disclosed that, while the countywide unemployment rate was 5 percent, the rate was 15.3 in the community development areas where 73 percent of Dade County's black population resides. 70/ In Overtown, Model Cities, and Coconut Grove the unemployment rate was even higher: 19.4, 17.8, and 16 percent respectively. 71/

There are other indicators of the black community's social and economic problems. In 1970, 29 percent of all Coconut Grove families, 34 percent of all Overtown families, and 30 percent of all Model Cities families were below poverty level. 72/ Overall, 28 percent of the black families in Dade

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68/ Ibid., Table V, p. 19.

69/ U. S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings January 1981, p. 162.

70/ Profile of Low Income Areas, p. 17.

71/ Ibid.

72/ BSRI, The Miami Race Riots of 1980, Table 17, p. 41; Table 9, p. 20; and Table 5, p. 21. The Dade County's Office of Economic Development Coordination reported that in 1976 Culmer Park in Overtown had the lowest median income for any of the county's community development target areas. Metropolitan Dade County, 3-Year Community Plan: Vol. I Community Development and Housing Needs: Culmer (1978), p. 5.

County had incomes below poverty level, 73/ and blacks had a high-school-dropout rate of 27 percent. 74/ At the same time, only 7 percent of all non-Hispanic white families countywide were below the poverty level, 75/ and the high-school-dropout rate for all of Dade County was 16 percent. 76/

In 1980, a Dade County study profiled conditions in 18 community development areas. 77/ Three-fourths of all blacks in Dade County lived within these areas, the focus of community development. In 10 of the 18 areas, blacks comprised more than 70 percent of the population. 78/ The study reported that renters constituted more than 70 percent of all households in all 18 areas, and that almost half of those renter households had incomes below $4,900. 79/ In Coconut Grove, more than 70

73/ *Profile of the Black Population*, p. 22.

74/ BSRI, *The Miami Race Riots of 1980*, Table 13, p. 34.

75/ *Profile of the Black Population*, p. 22.

76/ BSRI, *The Miami Race Riots of 1980*, Table 13, p. 34.

77/ Dade County Department of Human Resources, *Profile of Social and Economic Conditions in Low-Income Areas in Dade County, Florida* (1980) (hereafter cited as Profile of Low-Income Areas).

78/ Ibid., p. 2.

79/ Ibid., p. 10.

percent of the renters had incomes below $4,900, as did 63.5 percent in Model Cities and 36.1 percent in Overtown. In both Overtown and Coconut Grove, the percentage of renters was considerably higher than the average for all 18 community development target areas as a whole. 80/

The 1980 study also reported a particularly strong relationship between household composition and income: single-parent families headed by a female were likely to have considerably less income than others. 81/ This relationship is notable in Model Cities, Coconut Grove, and Overtown where more than half of all families reportedly are headed by only one parent, the majority by women. 82/

Housing conditions, which have always been worse for black Miamians than for whites, also appear to have deteriorated since 1970. In that year, 13 percent of the county's population resided in overcrowded housing; however, over 30% of the county's black residents were inadequately housed. 83/ The

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80/ Ibid. In Overtown, 96.9 percent of all households were renters, and in Coconut Grove, 80 percent of all households were renters.

81/ Ibid., p. 10.

82/ Ibid., p. 11.

83/ BSRI, The Miami Race Riots of 1980, Table 5, p. 21. The basic census definition of overcrowding is a housing unit with more than one person per room. Profile of the Black Population, p. 38.

1980 county study reported that, although overcrowding may have eased somewhat in Coconut Grove and remained constant in Model Cities, it has increased in Overtown, so that slightly more than 40 percent of all housing units in Overtown currently are overcrowded, a 7 percent increase in 10 years. 84/ Much of the housing stock also is in need of repair. In 1975, 65 percent of the housing in the Culmer Park section of Overtown either was dilapidated or needed major repair, although only 10 percent of the housing stock in the city as a whole was in such condition. 85/ Today, the housing stock in Model Cities and Coconut Grove is deteriorating, as well. 86/

Educational problems also have become more severe in Miami's black neighborhoods since 1970. The high school dropout rate in Overtown was 37 percent in 1970, 87/ and, by 1978, over half the population aged 20-24 had not completed

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84/ Profile of Low-Income Areas, p. 25, Table XII, states that 31.7 percent of the housing in Model Cities, 24.9 percent in Coconut Grove, and 40.3 percent in Overtown are overcrowded. BSRI, The Miami Race Riots of 1980, Table 5, p. 21; Table 9, p. 28; and Table 17, p. 41 state that in 1970, 31 percent of the housing in Model Cities, 33 percent in Coconut Grove and 33 percent in Overtown was overcrowded.

85/ Community Development and Housing Needs, Profile of Needs, Culmer Target Area, Table 5, p. 6.

86/ Ibid.; Profile of Needs, Model Cities, p. 1; Coconut Grove, Table 5, p. 5.

87/ BSRI, The Miami Race Riots of 1980, Table 9, p. 28.

high school. 88/ Similarly, in Coconut Grove the dropout rate was 28 percent in 1970, 89/ and, by 1978, 40 percent of those aged 20-24 had not completed high school. 90/

Black exclusion from the economic renaissance translates into low earnings, high unemployment rates, reduced job opportunities, and the absence of capital formation and investment ventures. This lack of a black economic base, in either employment or ownership or a combination of both, has significant long-term implications for the black community. The effects of low incomes and low employment rates among Miami's black families are poor quality and overcrowded housing, low home ownership rates, neighborhood problems, and health and dietary problems. The most notable consequence of the black community's lack of economic power is its lack of political power in the larger Miami community. 91/

88/ Profile of Low-Income Areas, Table X, p. 19.

89/ BSRI, The Miami Race Riots of 1980, Table 17, p. 41.

90/ Profile of Low-Income Areas, Table X, p. 19.

91/ Since the late 1960s there has always been one black city commissioner and one black county commissioner, and since 1970 there has been a black member of the county school board. The system of at-large election for these commissions virtually ensures that black representation on those bodies will not increase. Feagans, Political and Program Structure of Dade County, pp. 23-30.

Underlying the violence that exploded in May 1980 was a sense of the black community's inability to produce change or affect fate. Even now, two years after the violent civil disturbances, that sense of powerlessness remains. In the booming local economy, as the memory of civil disorders recedes, the interest, activities, and concern for the black community fade away. 92/

92/ Cf. Ted Nichols, Chairman, Florida State Advisory Committee to the U. S. Commission on Civil Rights, Hearing Transcript, p. 26; Theresa Saldise, testimony, Hearing Transcript, p. 30; Williard Testimony, Hearing Transcript, pp. 45, 73, 75; Padron Testimony, Hearing Transcript, pp. 57-88; Hardwick Testimony, Hearing Transcript, pp. 62, 85; Baro Testimony, Hearing Transcript, p. 67; Irwin Block, testimony, Hearing Transcript, pp. 1170-71; Robert Simms, Executive Director, Community Relations Board, testimony, Hearing Transcript, p. 1175; Perry Testimony, Hearing Transcript, p. 1188.

CHAPTER II

EDUCATION: SHORT-CIRCUIT IN THE SEARCH FOR EQUAL OPPORTUNITY

Following the landmark Supreme Court decision in Brown v. Board of Education, which struck down dual school systems and rejected the "separate but equal" doctrine, those who believed in equal opportunity looked upon the public education system as the institution that would move blacks into the economic and social mainstream of American society. In Dade County, education no longer is perceived as the ultimate equalizer.

Remnants of a dual school system persist: racially identifiable schools, often undercapacity and unable to provide a full complement of programs, continue to operate in the inner city. Furthermore, the burden of student reassignment for desegregation purposes rests almost entirely on the black community.

Vocational training, which teaches technical skills needed in the workforce, arguably has become as necessary a component of modern education as reading, writing and arithmetic. In Dade County, minority students must make do with the inner city schools' outdated and dilapidated equipment. These students also are particularly affected by the general system-wide lack of adequate guidance counseling.

Finding 2.1: Black students are experiencing serious difficulties in the Dade County Public Schools.

The Dade County Public School System is the fifth largest in the country, with a total enrollment for the 1979-80 school year of 224,181 students. The 1979-80 student population was 35.6 percent white, 29.9 percent black, and 33.7 percent Hispanic. 1/ After the latest influx of Cuban refugees, the number of Hispanic students swelled to 86,133. 2/ In addition to the Spanish-speaking students, the Dade County Public School System serves some 40 language minorities. The student/teacher ratio is 20/1, with a total number of 11,984 instructional staff, of whom 62.3 percent are white, 25.6 percent are black, and 11.7 percent are Hispanic. 3/

The most obvious means for assessing the quality and success of an educational system is to evaluate student progress as measured by standard achievement norms. According to Dr. Ray Turner, Executive Director of Program Evaluation, in

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1/ Dade County Public Schools, Office of Management and Budget, "Ethnic/Racial Characteristics of Pupils and Staff as of September 1979" (May 1980) (hereafter cited as Ethnic/Racial Characteristics), Table 1.

2/ Mr. Robert Little, Director, Attendance Department, Division of Student Services, Office of Student Support Programs, Dade County Public Schools, telephone interview, Mar. 31, 1982.

3/ Ethnic/Racial Characteristics, Table 9.

almost every category, Dade County students score consistently above the national average. At the primary level, Dade County students are above the national median in mathematics and slightly above median in reading. At the intermediate school level, students' reading and mathematical skills are slightly higher than the national median. At the junior and senior high school levels, Dade County Public School System students are above the national average in mathematical computation, at the national average in mathematical concepts, and slightly below the average in reading skills. According to the Dade County Public School System, the level of educational skills has been rising over the past 5-6 years in Dade County. 4/

It is unclear, however, whether the rate of achievement is the same for black students as for other students because Dade County Public School System does not break down the scores by ethnic categories. 5/ Moreover, the Dade County Public School System appears unable to determine whether black students are making any significant educational progress. In fact, the dropout rate, one possible indicator of performance, shows that

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4/ Dr. Ray Turner, testimony, Executive Director, Division of Program Evaluation and Management Analysis, Dade County Public Schools, Hearing Before the U.S. Commission on Civil Rights, Miami, Fla., Dec. 8-11, 1980 (hereafter cited as Hearing Transcript), pp. 198-99.

5/ Turner Testimony, Hearing Transcript, pp. 199-200.

black students may not be faring as well as their white and Hispanic counterparts. Although fewer than one-third of white and Hispanic students dropped out of the 1979 graduating class, more than half of the black students did so. The black dropout rate has risen steadily in recent years, while the rate has increased slightly for whites and has been fairly stable for Hispanics. 6/

Despite indications that the dropout rate for black students is increasing, little is being done to counter the trend. The Dade County Public School System lacks an effective method for identifying potential dropouts, and even if potential dropouts could be identified early on, school counseling services are inadequate to fill the needs of these students. There are far too few counselors, particularly at the elementary school level, 7/ and caseloads at the secondary

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6/ Paul Cejas, Chairman, Dade County Public School Board, testimony Hearing Transcript, pp. 314-15. Rough figures for the overall population of the 1979 graduating class show a dropout rate of 35.9 percent. When this percentage is broken down by race, the figures show that 31.6 percent of white students have left school, up from 28 percent in the 1977 graduating class; the rate for Hispanics is 29.7 percent, roughly stable since 1977; and the rate for black students is 50.57 percent, up from 40.5 percent in 1977. The dropout rate for blacks has risen steadily and preliminary figures for the 1979-80 school year indicate a rate of 49.6 percent.

7/ Gwendolyn Jennings, Director of Student Development Services, Dade County Public Schools, testimony, Hearing Transcript, p. 203 (hereafter cited as Jennings Testimony).

level are so high as to preclude intensive, effective counseling. 8/ A great amount of the counselors' time is consumed by paperwork, which means that they cannot schedule student appointments promptly. Even though the dropout rate for black students indicates special needs different from those of the general school population, no attempt is made to tailor counseling to meet these needs. Nor does the placement of counselors take into account the racial makeup of student populations. 9/

A dropout prevention program, Bilingual Alternative for Secondary Education Guidance Program (BASE), funded through Title IV of the Elementary and Secondary Education Act of 1974, 10/ was established to help potential Hispanic dropouts at the junior high school level. The program has been expanded to include other minorities, particularly blacks, and is currently available in some senior high schools. 11/ The student takes BASE in lieu of another course, and the

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8/ Ibid.

9/ Ibid., p. 204.

10/ Education Amendments of 1974, Pub. L. No. 93-280, §IV; 88 Stat. 484 (1974) (codified at 20 U.S.C. §241a-241j, §887a-900a-5 (1976 and Supp. III 1979)).

11/ Dr. Ivette Morgan, testimony, Hearing Transcript, pp. 204-05.

curriculum consists of five units—communication, negotiating, values, decisionmaking, and dealing positively with anger.

School principals cannot be forced to adopt project BASE. 12/ If they accept the program, the guidance counselors who will teach the BASE course receive in-service training. The guidance counselor then uses a behavioral problem checklist to determine which students to enroll in the program. The counselor discusses each unit in advance with the parents of participating students. 13/

Although BASE is a step in the right direction, the project is operating at a very limited level of its full capacity. With a potential to serve 2,000 students, it currently serves only 400. 14/ One barrier may be the school administration's unwillingness to encourage principals to accept the program. 15/ Another may be that the inadequate number of guidance counselors within the schools are already overworked. 16/ Whatever the reason, the dropout rate for black students is significant.

12/ Ibid.

13/ Ibid., p. 212.

14/ Ibid., p. 205.

15/ Dr. Ivette Morgan, interview in Miami, Fla., Nov. 7, 1980.

16/ Jennings Testimony, Hearing Transcript, p. 203.

For the black students who remain in school, teachers and administrators often create obstacles by refusing to recognize that the socioeconomic background of many of these students may contribute to classroom behavioral problems. 17/ In the "alternative opportunity" schools, which Dade County Public School System created to serve students with severe disciplinary problems, blacks are overrepresented. 18/ According to Arthur Woodard, principal of Miami MacArthur North Senior High School, an alternative opportunity school, staff spend more time counseling and addressing the behavior problems of white students within the regular classroom environment:

> As we make comparisons, utilizing the folders, we find that a black student's folder is very thin when it gets to us and a white student's folder is thick, so we are saying there that the white student seems to get more ample counseling...before he is assigned to us. 19/

17/ Ibid., p. 211.

18/ Out of a total pupil membership of 1,216, 88.2 percent (1,073) were black, 7.6 percent (93) were non-Hispanic white, and 3.9 percent (48) were Hispanic. Ethnic/Racial Characteristics, Table 1.

19/ Arthur Woodard, testimony, Hearing Transcript, pp. 208-09.

Consequently, the alternative opportunity schools have been criticized as "dumping grounds" for blacks. Despite the higher teacher-pupil ratio for all alternative opportunity schools, 20/ the dropout rate is above 70 percent, 21/ appreciably higher than the general dropout rate of 17.6 percent. 22/

Finding 2.2: Many minority students are being denied the benefits of a desegregated school system. Two key factors have contributed to this result: the desegregation plan was not adjusted to a shifting population, and both school system officials and the court failed to monitor with sufficient vigor the implementation of the plan.

In 1954, the United States Supreme Court in *Brown* v. *Board of Education* held that, "[I]n the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." 23/ This decision established that separating black children "from others of similar age and qualifications solely because of their race

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20/ The teacher-pupil ratio is 1 to 16 in alternative opportunity schools. Woodward Testimony, Hearing Transcript, 206.

21/ Ludwig Gross, Assistant Superintendent, Student Support Programs, Dade County Public Schools, telephone interview, Mar. 29, 1982.

22/ Joseph Sherron, Supervisor, Placement and Follow-up Services, Department of Career Education, Office of Student Support Programs, telephone interview, Mar. 29, 1982.

23/ 347 U.S. 483, 495 (1954).

generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." 24/ This case paved the way for the subsequent desegregation of American public schools.

The Dade County Public School System operated a segregated school system until 1959. In September of that year, the school board established a policy permitting students to transfer from the school in which their race was a majority to a school where their race was a minority. Students were also permitted to transfer from schools where they were in the minority to schools where their race was a smaller minority. 25/ By October 1965, only 92 of the county's 208 public schools were racially mixed. By 1967, the number had increased to 123 of 213 schools. 26/

The Dade County Public School System apparently undertook complete school desegregation with reluctance. The school board developed an interim desegregation plan for the 1969-70 school year in response to a Department of Health, Education and Welfare review that found the school system racially

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24/ Id. at 494.

25/ Pate v. Dade Co. School Bd., 315 F. Supp. 1161, 1174 (S.D. Fla. 1970).

26/ Ethnic/Racial Characteristics, p. v.

27/ Ibid.

segregated. 27/ Suit was brought against the school board in a Florida State court, and the case was removed to Federal district court. 28/ In March 1970 the board filed its final desegregation plan with the court. 29/ The plan was approved with court-imposed revisions. 30/ The court order included the creation of a permanent biracial committee to monitor the transfer of students according to the desegregation plan and report to the court. 31/ The board appealed the decision to the fifth circuit, 32/ which made further modifications, including increased pairing of schools to accomplish more balanced desegregation and an order that the District Court retain jurisdiction over the Dade County Public School System plan. 33/

28/ Pate v. Dade Co. School Bd., 315 F. Supp. 1161 (S.D. Fla. 1970).

29/ Id., at 1163.

30/ Id., at 1164-65.

31/ Id., at 1174. The Committee also makes recommendations as to site selection and acquisition of property and construction of schools. Dr. Leonard Britton, Superintendent, Dade County Public Schools, letter to Paul Alexander, Apr. 30, 1982, Attachment 4, p. 5 (hereafter cited as Britton letter). See Appendix A for Britton letter (attachments maintained in Commission files).

32/ Pate v. Dade Co. School Bd., 434 F.2d 1151 (5th Cir. 1970), cert. denied, 402 U.S. 953 (1971).

33/ Id. at 1158.

In 1970, the district court ordered the desegregation of faculty and administrative staff. 34/ Some 2,000 teachers were reassigned in an effort to eliminate segregated teaching staffs. Black/white teacher ratios were established for each academic level within the school system. 35/ Proportionately, more black teachers were transferred because there were more white schools than black schools. The school board gave individual principals at the predominantly white schools authority to make the teacher transfer decisions. The nature of this selection process permitted white principals to select the most competent black teachers while retaining their most capable white teachers. As Dr. Everett Abney, a Dade County Public School System area superintendent, explained to the Commission:

> The problem with...[the] transfer process is that...teachers that were returned to Northwestern were selected by principals of the schools they were coming from...and Northwestern (a predominantly black school)

34/ Ethnic/Racial Characteristics, p. v.

35/ Patrick Gray, Assistant Superintendent, Office of Personnel, Dade County Public Schools, memorandum to Dr. Leonard Britton, "Report--Actions to Effect the Attainment and Maintenance of Faculty Racial Ratios in All Schools" (Apr. 21, 1980) (hereafter cited as Britton Letter).

> wound up with...individuals that, for the most part, were not able to serve the needs of the youngsters in Northwestern, all of whom were black. 36/

The court-ordered desegregation plan called for school pairings in order to accomplish student transfers with a minimal amount of busing. As a result of the pairings, a number of "one race" schools in predominantly black neighborhoods were closed so that the board could desegregate schools in predominantly white neighborhoods. 37/ In recent years, the number of students who are bused has increased and additional schools have been closed due to dwindling enrollments. 38/ Black parents in the inner city have become

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36/ Dr. Everett Abney, North Central Area Superintendent, Dade County Public Schools, testimony, Hearing Transcript, pp. 151-52 (hereafter cited as Abney Testimony). Dr. Britton, however, indicates that the transfer process proceeded according to procedures spelled out in the teacher-union contract, not by principal discretion. Britton letter, Attachment 4, p. 6.

37/ Dr. Gordon Foster, Director, Miami Desegregation Assistance Center and Bilingual General Assistance Center, testimony, Hearing Transcript, pp. 148-49. Dr. Britton, however, indicates that only one such school was closed. Britton letter, Attachment 4, p. 6.

38/ Abney Testimony, Hearing Transcript, pp. 165-66.

increasingly vocal in opposing school closings because they view them as contributing to the erosion of their communities. 39/

The Dade County Public School System chose a pattern of busing for desegregation purposes that has resulted in an increasing number of black students being bused to schools in predominantly white neighborhoods, which are often long distances from the black communities. Few white students are bused to the inner-city schools from which black students are bused. As a result, many inner-city schools are operating at less than their capacities, unable to provide a full complement of programs and facing continual threats of closing. 40/

To equalize school enrollments, the Dade County School Board shifted attendance zones. These zones have been changed frequently, partially because the population has grown rapidly in outer areas of the county, 41/ but also because the Dade County Public School System has been unable to formulate a

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39/ Miller Dawkins, testimony, Hearing Transcript, pp. 134-35.

40/ Three black high schools, Dorsey, Booker T. Washington, and Carver, were closed as high schools during efforts to desegregate. Foster Testimony, Hearing transcript, pp. 148-49. See also Nathaniel Miller, Outreach Specialist, Family Health Center and President, Dorsey Western Alumni Association, testimony, Hearing Transcript, p. 161; Abney Testimony, Hearing Transcript, pp. 165-66.

41/ Miller Testimony, Hearing Transcript, p. 161.

long-range boundary plan. 42/ This inability is due in part to political pressure exerted by white parents who refuse to have they their children bused to inner-city schools. 43/ Bowing to this pressure, the Dade County Public School System has made attendance boundary changes that have permitted white students to remain in their neighborhood schools.

No provision was made for Hispanics in the court-ordered desegregation plan, which applied only to black and white students. Although the order was never formally modified, as a matter of course, the court started appointing ethnic representatives to the biracial committee in the 1970s, 44/ but it did not order a revision of the desegregation plan. Through its method of realigning the boundary zones, the Dade County Public School System has apparently used Hispanic students to "desegregate" schools to avoid transferring whites to black schools and vice versa. Despite the Dade County Public School System's desegregation efforts, many Dade County schools remain

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42/ Foster Testimony, Hearing Transcript, p. 149. See also Miller Testimony, Hearing Transcript, p. 153.

43/ Foster Testimony, Hearing Transcript, pp. 158-59. See also Terri Packar, Chairman, Dade County Public Schools Citizens Advisory Committee, testimony, Hearing Transcript, pp. 160-61.

44/ Clerk, United States District Court, Southern District of Florida, telephone interview, Mar. 30, 1982.

virtually one-race schools, particularly in affluent white neighborhoods and inner-city black neighborhoods. 45/

In 1979, the Dade County Public School System administration issued an ambitious boundary plan, which would have affected 56 schools. The plan angered many white parents because it entailed wide-scale busing of their children. The school board vetoed the plan. 46/ Subsequently, the Dade County Public School System Superintendent appointed a Select Committee on Attendance Zone Guidelines to devise both short- and long-range plans to accommodate the goals of desegregation with minimal community disruption. The Select Committee recommended the creation of an Attendance Boundary Committee (ABC) composed of citizens and school administrators, and such a committee was convened in September 1980. 47/ The ABC's function is to identify target schools for boundary adjustments based on individual school capacities as determined by school principals. The ABC acts in an advisory capacity, while the school board makes all final boundary decisions.

45/ Foster Testimony, Hearing Transcript. p. 149. See also Miller Testimony, Hearing Transcript, p. 153.

46/ Clarence Ewell, Chairman, Biracial/Triethnic Committee, Interview in Miami, Fla., Oct. 7, 1980.

47/ Select Committee on Attendance Zone Guidelines, "Recommendations for a Community Based Plan on Developing School Attendance Zones for 1981-1982" (September 1980), pp. 6-7.

Much of the recent need to rezone school attendance boundaries resulted from the influx of Cuban and Haitian refugees into Dade County. Neighborhoods where refugees settled have seen dramatic increases in school enrollment. 48/ Portable school annexes, which originally were used under the school desegregation plan, have been shifted and used for additional classroom space to accommodate entrants. 49/ The Dade County Public School System now faces the formidable task of creating a plan to integrate entrant students throughout the school system.

The desegregation process in Miami has been much more painful and problematic than necessary due to serious flaws in the design and implementation of the plan for desegregation. Although the federal district court retains jurisdiction, which in itself is an acknowledgement of the failure to achieve a unitary school system, it has done little to cure the problems that pervade the plan's implementation. The biracial, triethnic committee has been the only citizen group that has brought before the court complaints demanding adjustments to the plan to

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48/ Paul W. Bell, Associate Superintendent, Bureau of Education, Dade County Public Schools, Prepared Remarks to the Florida Advisory Council on Intergovernmental Relations, Sept. 3, 1980 (maintained in Commission files). As of September 1980 an estimated 13,000 school age entrants would be entering the Dade County Public School System.

49/ Packar Testimony, Hearing Transcript, pp. 163-65.

deal with the changing reality in Dade County. 50/ However, the court has largely ignored the committee's recommendations. 51/

Prior to desegregation, although black students did not receive equal educational opportunities, their attendance at black schools staffed by black teachers in black neighborhoods created a strong sense of community. Teachers usually resided within the community and often knew the parents of their students. If a student was not doing well in school, the teacher and parents were likely to have personal contact. Teachers working and residing in the community were positive role models for young blacks. 52/

The teacher transfer process, however, changed the teacher-student-parent relationships. Black students lost valuable role models, and personal contact outside the school setting between teachers and parents decreased markedly. Rather than interacting socially with students and their parents as the black teachers had done, the new white teachers left the community immediately after school hours. 53/

50/ Foster Testimony, Hearing Transcript. pp. 176-79.

51/ Ibid.

52/ Miller Testimony, Hearing Transcript, pp. 167-69.

53/ Ibid.

Black students, bused out of their neighborhoods to attend schools in white neighborhoods, were confronted with the extreme economic differences of black and white communities in Miami-Dade County. Many black students spent 6 to 8 hours per day in the "affluence" of the white community, only to return to the poverty of the black inner-city at the end of the school day. 54/

According to Dr. George M. Koonce, Jr., principal of predominantly black Miami Northwestern Senior High School, with the advent of the desegregation era, blacks placed much hope in public education as the great social equalizer. 55/ Initially, many black parents were enthusiastic about school desegregation because they saw the original plan as a means for assuring an equitable, quality education for their children. 56/ Although Dade County's school desegregation efforts have not been entirely unsuccessful, some aspects of the plan's implementation by the Dade County Public School System have proved destructive in the black community.

54/ Ibid.

55/ Dr. George M. Koonce, Jr., principal, Miami Northwestern Senior High School, Dade County Public Schools, interview in Miami, Fla., Oct. 15, 1980.

56/ Patricia Due, testimony, Hearing Transcript, p. 97.

Finding 2.3: Vocational programs within the Dade County Public Schools often fail to provide students with appropriate employment skills, which particularly affects the ability of black students to compete successfully in the job market.

Providing sound vocational counseling and relevant training skills not only would be an effective means for reducing the dropout rate for blacks, but also would provide students with a valuable education that could reduce unemployment. The Dade County Public School System vocational program is not meeting these needs.

The vocational training facilities available to inner city black students are generally inferior to those offered to suburban students. Vocational equipment in inner-city high schools often is outdated and in poor condition. 57/ In addition to vocational classes within each high school, Dade County Public School System operates two vocational institutions open to high school students on a shared-time basis. 58/ Neither of these training schools, one in the south end of the county and the other in the far west, is close enough for inner-city students to attend. Creating a consortium of the

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57/ Dr. George M. Koonce, Jr. testimony, Hearing Transcript, p. 257.

58/ Koonce Testimony, Hearing Transcript, p. 249. See also Dr. Fred Schollmeyer, Director, Vocational Program Services, Dade County Public Schools, Testimony, Hearing Transcript, p. 258.

inner-city high schools to provide improved vocational facilities has been discussed, but has not yet occurred. 59/

But more important than facilities is the black community's perception that black students are steered into vocational education programs that train students for low-paying, less-skilled jobs without potential for upward mobility.

Guidance counselors play a central role in helping students determine which vocational programs meet the students' aptitudes and career goals. In addition to questions concerning whether there are sufficient numbers of counselors, there are simply not enough counselors to be effective. 60/ Many counselors are poorly informed about the training programs and the current job market. Some counselors seem to believe that, following high school graduation, all students should go on to college and eventually become professionals. 61/ Even if the counselors see vocational training as an option, they are unable to tell students what vocational skills are needed within the Dade County business sector. As a consequence, many students complete vocational training and find their skills useless for meaningful employment.

59/ Schollmeyer Testimony, Hearing Transcript, p. 258.

60/ Ibid., pp. 250-51.

61/ Ibid., p. 251.

Young blacks are not represented proportionally in vocational training for unionized trades, although such training would provide access to jobs with higher salaries and more job security. According to the director of the Dade County Public School System vocational program services department:

> We have very few programs [for unionized trades] in our system. Most of our programs--most of the unionized shops in this area are in the building trades and we only have one program in the building trades area and that happens to be at Miami Central, and I daresay that most of the students that are participating in that program are black.
>
> We do have a large apprenticeship training program that takes place at postsecondary level and there is a lack of black participation in those particular programs. 62/

Many people believe that a lack of role models causes young blacks not to avail themselves of more highly skilled

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62/ Schollmeyer Testimony, Hearing Transcript, p. 261.

vocational programs. As a black high school principal told the Commission:

> [W]e just don't have mass numbers of black people who are computer technicians, or who repair Xerox machines, or who repair any kind of business office machines where the employment opportunities [are]...we don't have enough that they present enough of a mirror that would provide the aspiration on the part of some minorities getting into that. 63/

Several major Miami-Dade employers have criticized the Dade County public school system, contending that many students cannot read or write or communicate effectively. 64/ The private business sector generally has criticized the Dade County Public School System vocational program for providing inadequate and inappropriate training and for graduating ostensibly trained students who lack the skills to fill the many openings in the Dade County job market. Consequently,

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63/ Koonce Testimony, Hearing Transcript, p. 262.

64/ Richard McEwen, Chairman of the Board, Burdines Department Store, Federated Department Stores, testimony, Hearing Transcript, p. 629; Joseph O'Shields, Senior Vice President, Southeast Banking Corporation, Ibid., p. 638.

many larger businesses are being forced to recruit employees from outside the metropolitan area and the State. 65/

Critics say that one reason students lack usable vocational skills is that Dade County Public School System has not maintained sufficient contact with the business sector. Better relations with employers would keep Dade County Public School System abreast of current employment trends in order to tailor Dade County Public School System vocational courses to reflect local employment needs. In fact, the Dade County Public School System actually does make some effort to correlate vocational training offered in the public schools with employer needs. The State of Florida requires its school systems to design 5-year plans including the probable number of students to be trained for various occupations. 66/ The Dade County Public School System created 62 craft advisory committees to advise its vocational program services department about necessary course content, equipment purchases, and employment opportunities in their particular fields. 67/ The business community contends that these advisory committees are not used

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65/ Daniel Bronson, Vice President for Industrial Relations, Racial-Milgo Electronics Corporation, testimony, Hearing Transcript, p. 648.

66/ Schollmeyer Testimony, Hearing Transcript, p. 252.

67/ Ibid.

to their fullest potential to respond systematically to area employment needs. 68/ The Dade County Public School System is effective, however, in creating vocational training courses in response to extraordinary new needs. 69/

One witness pointed out that such communication failures cannot be attributed entirely to the Dade County Public School System.

> I want to hasten to add that responsibility is not all the school system's. There are enormous amount[s] of responsibility involved on the other side, in the employing systems in the community, also, so I think that, if we could apply the same techniques and the same emphasis and the same concept of tailor-making programs to the system as a whole as we do these special needs that come up and seem to attract a little more attention because of the glamour involved, it would be very helpful. 70/

68/ Freeman Testimony, Hearing Transcript, p. 255.

69/ Ibid., p. 253.

70/ Ibid., pp. 253-54.

Finding 2.4: Although bilingual programs have been emphasized in the Dade County Public Schools, bilingual programs have not provided black students with any degree of proficiency in Spanish as a second language.

The number of Hispanic students in the Dade County Public Schools increased substantially after 1960. In 1967, there were 25,650 Hispanic students enrolled in Dade County. By 1970, that number had increased to 46,552. 71/ In 1961, the school board established two programs, Spanish for Spanish Speakers and English for Speakers of Other Languages. A more comprehensive bilingual education program was added in the mid-1960s, 72/ but the programs were limited to approximately 3,000 students.

In 1973, the school board strengthened its existing programs by expanding them to the elementary level, thereby giving all students the opportunity to cultivate communication skills in Spanish and English, and increasing the number of schools offering bilingual education. After an on-site visit from the HEW Office of Civil Rights in 1976, the Dade County Public School System developed a plan to comply with Title VI

71/ Dr. Robert Little, Director, Attendance Department, Division of Student Services, Office of Student Support Programs, Dade County Public Schools, telephone interview, Mar. 31, 1982.

72/ Ralph F. Robinett, Director, Bilingual/Foreign Language Education, Division of Elementary and Secondary Instruction, Dade County Public Schools, telephone interview, Mar. 31, 1982.

of the 1964 Civil Rights Act and strengthened its English for speakers of other languages and Spanish for Spanish speakers programs. 73/ The bilingual curriculum content program, which uses the home language for instruction in various subject areas, expanded to all schools with students of limited English-proficiency. The plan also provided for the use of home languages in any school with 20 or more limited-English-proficiency students of that language background. 74/

By 1979, the Hispanic student population had grown to 73,600, and Operation Bilingual was introduced. This program's primary goal was to increase significantly the number of native English-speaking students graduating with functional use of Spanish. The school board developed the program after realizing that bilingual capacity was important to compete successfully in the southern Florida job market. 75/

On the whole, the Dade County Public School System bilingual education program has not been effective for black students. Although one its stated goals is to give students an oral command of Spanish, the program has failed to provide most black students with functional language skills. Spanish is

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73/ Ibid.

74/ Ibid.

75/ Ibid.

taught in the elementary schools, but at best students receive only simple instruction. The Dade County Public School System does not stress the relevance and value of bilingual skills for all residents in the Dade county community. Many students, disappointed with their progress, do not continue with the optional Spanish program at the secondary school level.

Given the multi-cultural, bilingual nature of the Miami-Dade County area, a functional command of Spanish is advantageous, particularly in the area of employment. Many businesses actively seek Spanish speakers. If blacks could communicate effectively in Spanish, job opportunities might be more readily available. 76/ Witnesses at the hearing affirmed the significance of being bilingual as the following excerpt from a panel on vocational education shows:

> Counsel. I would like to address the question to the entire panel. How important is the ability to speak Spanish to finding gainful employment in Dade County?
>
> Dr. Koonce. I think it is important....I think the perceived importance might be greater in fact than what it really is, but I think the ability to speak Spanish in

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76/ Freeman Testimony, Hearing Transcript, p. 266.

terms of increasing or enhancing one's ability is needed. 77/

Mr. Freeman. I think that for a very small additional personal investment to learn the other language the opportunities are increased many-fold and I think that it is virtually a functional necessity for that youngster who really wants to participate in all the economic opportunities in this county to have a conversational knowledge of Spanish. 78/

Ms. White. I agree with the other gentlemen. It is very important, especially if the students are going in on an entry level position. 79/

Dr. Schollmeyer. I agree with the other panel members. I would like to add, though, and I need to underscore this: What we're saying is, it is important that the students

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77/ Koonce Testimony, Hearing Transcript, p. 266.

78/ Freeman Testimony, Hearing Transcript, p. 266.

79/ Cathy White, Occupational Placement Specialist, Dade County Public Schools, testimony, Hearing Transcript, p. 266.

> be able to speak both languages, not only just Spanish, but both English and Spanish, and then I would definitely say that the person with that ability has an advantage over a person who only speaks English. 80/

The stated goal of the Dade County Public School System, to give students bilingual skills, 81/ has not been widely fulfilled. Because the Spanish being taught appears not to be functional, black parents have begun to question the necessity of their children being taught Spanish. One parent accurately pinpointed the frustration:

> Ms Due. In the school system presently parents have the choice of having their kids take Spanish or not take Spanish. Over the past 4 or 5 years, I have given my consent for my children to take Spanish, but it is

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80/ Schollmeyer Testimony, Hearing Transcript, p. 267.

81/ Dade County Public Schools, Miami, Fla., Division of Elementary and Secondary Education, Procedures Manual-Bilingual Education/Foreign Languages (1978), p. vi. "The Dade County Public Schools...is committed to...ensuring that every student becomes proficient in English communication skills, is strongly urged to become proficient in understanding, speaking, reading and writing Spanish...and...is strongly urged to use a language other than English in addition to English as a tool for learning and as preparation for entry into the world of work."

> not meeting their needs....[T]hey still cannot converse with anyone in Spanish....We are going to have to have a progressive type Spanish rather than teaching the days of the week and the colors and a song or two every year.
>
> Counsel. It [the Spanish program for native English speakers] is not geared towards being functional in terms of day-to-day activity?
>
> Ms. Due. It has not been with my children, no. 82/

It is not certain that black students who become fluent in Spanish would be assured jobs upon graduation; however, a functional command of Spanish is a valuable qualification that could give blacks a competitive boost in the Dade County job market.

82/ Due Testimony, Hearing Transcript, pp. 117-18.

Chapter III

HOUSING: TO BREED DESPAIR AND VIOLENCE

Much like a family, school, or workplace, a neighborhood can either nourish or restrict its residents. In the neighborhoods where Dade County's black population resides, the buildings are deteriorating. Many are squalid. Overcrowding, severe rodent infestation, and delapidation characterize much of Overtown, Model Cities and other black enclaves in Dade County. For most people, these conditions engender apathy, hopelessness, frustration, and anger.

Governmental policies and actions undertaken in the mid-1960's contributed to present conditions in both Overtown and Model Cities. Urban renewal and highway construction devastated Overtown, at that time the central black neighborhood in Miami. Overtown's displaced black residents migrated to Model Cities, changing a largely rural area of single-family houses into a swollen ghetto populated well beyond available housing resources.

Public agencies subsidized the construction of much of the housing that exists today in Dade County's black neighborhoods. These agencies, while continuing to subsidize or manage the housing, have allowed it to deteriorate. Improving the housing stock in the black neighborhoods would require a massive rehabilitative effort. The influx of refugees, however, has inflated housing values in an already tight market and enabled landlords to reap significant profits from deteriorated properties without having to upgrade them.

Finding 3.1: Substantial numbers of Miami's low-income black population live in substandard housing. The large-scale occupancy in such deteriorating housing is a consequence of governmental urban renewal and highway construction, which eliminated many units of existing low-income housing and failed to replace it. The resulting shortage grew worse as the rental housing vacancy rate in Dade County shrank to exceptionally low levels of availability.

The report issued by the Governor's Dade County Citizens' Committee found that one of the underlying causes of the 1980 civil disturbances was the mounting frustration of daily life in Dade County's slums. 1/ Conditions that prevail in Miami's low-income black neighborhoods, the committee found, inevitably produce "apathy, frustration, hopelessness, unrest and crime." 2/

In describing the general character of the black community, the committee report noted, "[I]n most instances, both public and private housing...fall far below the minimum standard of decency. Disrepair is pervasive: holes in walls and ceilings, broken plumbing, and vermin infestation are the rule rather

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1/ Governor's Dade County Citizens' Committee, Report of Governor's Dade County Citizens' Committee (October 30, 1980), p. 17.

2/ Ibid., p. 17.

than the exception." 3/ The committee looked even more closely at the Overtown area:

> [T]here are over forty vacant slum buildings. These abandoned buildings are wide open, doors and windows agape, floors strewn with filth and the rooms overrun with vermin. Murder and rape, much of which is never reported and virtually all of which is unsolved, abound in these buildings. The City of Miami turns a blind eye on the festering sore and hides behind the dual excuse of lack of funds and the inability to affect the purported legal rights of owners by forcing appropriate action to remedy this threat to health and safety. These excuses are totally unacceptable. We doubt that these conditions would be permitted to continue if they existed in a White section of the city. 4/

3/ Ibid., p. 16.

4/ Ibid., pp. 20-21.

The Dade County Department of Housing and Urban Development ("Little HUD") manages almost 10,300 units of public housing 5/ and provides subsidy assistance for another 1,600 units of existing housing under the Section 8 program. 6/ An additional 2,000-5,000 units of federally assisted housing are planned or under construction in Dade County. 7/ For fiscal year 1980, the U.S. Department of Housing and Urban Development allocated an additional 100 public housing units for Dade County and 200 for Miami. 8/

"Little HUD" has made efforts to upgrade its public housing units and has built several smaller complexes containing single family dwellings. 9/ Despite its efforts, much upgrading remains to be done in many of its housing projects. Juanita Horton described the upgrading that was occurring in the James E. Scott project, where she lived:

5/ Metropolitan Dade County Department of Housing and Urban Development, Units in Management (May 1, 1980).

6/ Melvin Adams, Director, Dade County Department of Housing and Urban Development, staff interview, Sept. 15, 1980.

7/ Ibid.

8/ Ibid.

9/ Ibid.

> Ms. Horton. We have an urban initiative program...and...we receive[d] $5 million to...upgrade the electricity, to close in the breezeways, to put in individual hot water heaters....new refrigerators, new stoves, painting [for the] interior and exterior.
>
> Counsel. Does that meet the needs that exist in the local housing?
>
> Ms. Horton. It meets some of the needs. 10/

Allowing existing housing stock to deteriorate without making substantial improvements often results in rat infestation, and the level of its occurrence is an indicator of the housing conditions in low-income black neighborhoods. 11/ The Dade County Department of Public Health, which is responsible for rodent control, focuses on certain areas of the county in its efforts to minimize rat infestation. 12/ Alberto Ros, project director for the Rodent Control Project, inspected the James E. Scott housing project and testified at the Commission hearing:

10/ Juanita Horton, testimony, Hearing Transcript, p. 813.

11/ Alberto Ros, testimony, Hearing Transcript, p. 810.

12/ Ibid.

> [O]ur survey is interior and exterior and we go through every single apartment. We try to find all the causative conditions, rat harborage, environmental conditions inside the house, inside or outside, that will create rat infestations....Of those units [inspected]...I would say that almost 100 percent is roach infested, about 85 percent have rodents inside, and we have almost 100 percent known rat infestation. 13/

Housing conditions in Dade County's black neighborhoods, particularly Model Cities and Overtown, have resulted from specific governmental policies directly affecting black Miamians. The black community has had little, if any, control over these policies. Large numbers of black residents from Overtown, once Miami's most viable black community, were literally forced out of their homes 14/ and into what is now known as the Model Cities area. This shift in the black population was occasioned by a number of factors, principally

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13/ Ros Testimony, Hearing Transcript, p. 832.

14/ Oliver Kerr, Urban Renewal: The Practical Difficulties (unpublished paper, Master's program, the Catholic University of America, 1973), pp. iii, 1—2, 19.

the urban renewal program. 15/ Urban renewal was the vanguard of Federal programs designed to change the character of the inner city. Yet despite laudable goals, the program in Dade County had devastating consequences that were an important element in the discriminatory process that denied black Miamians open access to and full participation in the Miami community. 16/

Dewey Knight, the Assistant County Manager for Dade County, described the process of urban displacement that accompanied urban renewal:

> [T]he Urban Renewal program...was [designed] to...replace [the poor] housing in the area; the Urban Renewal program, however,...did not plan for people. It planned on replacing housing and in the process it cleared acres and acres of land. It cleared away thousands and thousands of people.... 17/

15/ Ibid.

16/ Patricia Mellerson, Chair, Miami-Area Community Housing Resource Board, telephone interview, Feb. 26, 1982.

17/ Dewey Knight, testimony, Hearing Transcript, p. 761.

Because the program failed to provide them with adequate compensation or relocation assistance, many of those displaced by urban renewal were unable to find comparable housing. This consequence was not only foreseeable, it was the inevitable result of the manner in which the urban renewal program was implemented. Destroyed housing was not rebuilt, and displaced families essentially were left to fend for themselves in a housing market that could not accommodate them. Juanita Horton, a former Overtown resident, was one of those forced out of her neighborhood:

> Counsel. You were originally settled in the Overtown area before the relocation occurred...and you moved into the Liberty City [Model Cities area] after...[urban] [r]enewal.
>
> Ms. Horton. Yes, I moved into Carver Sites, which is a part of the James E. Scott housing complex.
>
> Counsel. Was any assistance provided to you by Federal or county officials in helping you find housing...?
>
> Ms. Horton. No, there wasn't. 18/

18/ Horton Testimony, Hearing Transcript, p. 812.

The failure to provide adequate relocation assistance contributed substantially to the current housing conditions in Miami's low-income black neighborhoods. As Assistant County Manager Dewey Knight noted:

> The land was bought at what was considered the value of the land and, therefore, you could not get a replacement house for what the government was paying these individuals....[T]he movement of black people from the downtown area had to be into other black areas because of the pattern and system of segregation. That meant then that Brownsville and Liberty City, which were really developed initially as...kind of single-family areas...suddenly became overcrowded with concrete monsters...without the facilities and resources to support that movement of that population. 19/

Highway construction bisected the remnants of Overtown, forcing still more residents out of their homes. This population shift occurred over roughly a 20-year period. In 1960, Overtown had a total black population of 38,621. In

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19/ Knight Testimony, Hearing Transcript, p. 762.

1970, this figure had dropped to 20,901 and remained stable through 1974. 20/ In 1960, the Model Cities area had a total black population of 48,024, which ballooned to 74,138 by 1970 and to 76,064 by 1974. 21/

An extremely low vacancy rate has exacerbated the housing situation for black families. The vacancy rate for rental units has been less than 1 percent for at least the past 2 years. 22/ Testimony by Oliver Kerr, a Dade County planner, describes what this vacancy rate means in terms of possible mobility:

> Essentially what you are seeing is no vacancies at all, no reasonable chance of movement. All that you have is a turnover in units....[The recent influx of Haitian and Cuban refugees]...has had a major impact. The market prior to the influx was already extremely tight. As I say, half of one percent, no other metropolitan area in the country has such a rate. [The situation for

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20/ Metropolitan Dade County, Office of the County Manager, Profile of the Black Population (1979), p. 65.

21/ Ibid., p. 53.

22/ Oliver Kerr, testimony, Hearing Transcript, p. 809.

> low income families is] particularly severe. We have been impacted by a tremendous spate of conversion of existing rental units...to condos, and now with the influx of a total of 125,000 refugees in the past year...[that] translate[s] into 43,000 additional households seeking assistance. That's added to the severity of the situation, particularly for low-income [families] because these refugees, of course, have absorbed every available room, every shack, every available space in the county. 23/

There are few places to which blacks can relocate. If their incomes remain low, they are confined to the same kind of housing in which they are presently living. Even if their income levels begin to rise, locating new housing is virtually impossible.

Neighborhoods are not merely physical locations containing housing. Neighborhoods are also social structures, which either support or limit the activities of their residents. Dade County's black neighborhoods, because they have suffered

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23/ Ibid., pp. 809--10.

such rapid and massive demographic changes, generally lack supportive social structures. In looking at the housing conditions of Dade County's black neighborhoods, the Governor's Committee recognized the interrelationship of these conditions with social behavior:

> There is a direct correlation between high-density housing and high crime rates...[as] borne out by the violence and destruction...[of] the May riot and the July disturbances. The cruel truth is that inhabitants of slums are locked into them and are eventually borne down by them as well. Children growing up in tiny, dilapidated surroundings are unlikely to perceive themselves with any self esteem. Likewise, youths surrounded by people living on welfare, struggling merely to survive are unlikely to identify with any role models capable of inspiring them to achieve a better future for themselves and their families....Government subsidized housing and welfare programs...provide... disincentives to those who want to rise above their ghetto environment. The slum

> dweller...learns that [because] public housing is...[based on income levels]...hard work...[that increases income]...results, not in a rise in standard of living, but merely in increased rent and food stamp costs. 24/

The existence of racially identifiable slums in Dade County is not isolated from other factors that have had an adverse effect on the area's black citizens. Inequality is perpetuated by slums, poor education, unemployment, and crime. 25/

Finding 3.2: City and county officials have not vigorously enforced the housing code even though they were aware of numerous violations.

Dade County has a limited amount of low-income housing relative to the staggering need for such housing. The influx of refugees, rather than providing an impetus for building new housing, instead has created greater demand for existing low-income housing. Glenn Shuman, acting executive director of Legal Services of Greater Miami, described the problem:

> You have a supply and demand problem. As a supply dwindles and the demand increases, the cost of rent goes up....[T]he areas that

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24/ Citizens' Committee Report, pp. 17--18.

25/ Ibid., pp. 16--21.

> may...[have been] occupied by low income people are now being occupied by people who have a little bit more money, so they can afford those houses, thereby increasing the density of the Liberty City area....[The influx of]...refugees...has only compounded the problem. 26/

The current supply and demand situation permits landlords to maintain rental housing in whatever condition is most financially advantageous. 27/ The incentive to keep property in good repair is replaced by the awareness that even the worst housing is guaranteed a profit. According to Mr. Shuman:

> There's absolutely no reason for landlords to make any efforts to making any repairs of any housing in Dade County....[With] a vacancy rate of less than one percent...[the tenants] are at the mercy of the landlord. 28/

26/ Glenn Shuman, testimony, Hearing Transcript, p. 839.

27/ Ibid., pp. 840—41.

28/ Ibid., p. 840.

If tenants are dissatisfied with housing conditions and choose to move, there are always others willing to inhabit even the most deplorable units. The influx of Cuban and Haitian refugees has made rental housing a profitable business. Refugees are forced to live in any available housing and to pay exorbitant rents. Because of their uncertain status in this country, they are reluctant to protest poor housing conditions. Refugees often will overcrowd housing units to be assured of living space and to share in rental costs.

In Dade County, there are more than one half million housing units, 29/ of which an estimated 10 percent are substandard. 30/ Black families occupy the substantial majority of this substandard housing.

The local agency responsible for enforcing the housing code is a department of the Dade County Department of Housing and Urban Development, the Neighborhood Rehabilitation Division (NRD), which is composed of two operating sections. 31/ The Rehabilitation Assistance Program Section coordinates Federal

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29/ Eugene Miles, testimony, Hearing Transcript, p. 842.

30/ Ibid.

31/ Eugene Miles, Director, Neighborhood Rehabilitation Division, Metropolitan Dade County Department of Housing and Urban Development, interview in Miami, Fla., Nov. 4, 1980.

program assistance with local efforts to rehabilitate deteriorating housing stock to prevent the loss from the local housing market if it were to become uninhabitable or be demolished. 32/ The other section, the Minimum Housing Standards Enforcement Agency, has enforcement authority throughout Dade County. 33/

The Neighborhood Rehabilitation Division investigates housing code violations both in response to specific complaints and through routine inspections of housing units. Currently, 4 full-time field inspectors are assigned to conduct routine inspections in Liberty City. There are only 34 inspectors to cover the entire Dade County area, and consequently enforcement has been inadequate. 34/

Emergency situations usually are handled by the complaint method, although they occasionally are spotted during routine inspections. The severity and number of emergency conditions prevent adequate enforcement. NRD director Eugene Miles recognizes the inability of Dade County HUD to keep abreast of emergency housing conditions:

32/ Ibid.

33/ Ibid.

34/ Miles Testimony, Hearing Transcript, p. 843.

> [W]e do not pretend to be on top of all the emergency housing conditions because...many, many tenants are just inhibited from reporting poor housing conditions because of the possible threat of retaliation of being moved from the premises while the repairs are being made....[M]any hazardous housing conditions...[exist] that we know nothing about. 35/

Once a violation is found, NRD notifies the property owner to make repairs within 30 to 90 days, depending on the number of violations. If repairs are not made within the allotted time, NRD refers the violation to the State Attorney's Office (SAO) for prosecution as a criminal misdemeanor. 36/ The SAO also is empowered to bring civil suit against a landlord if it believes the housing code violations amount to maintenance of a public nuisance. 37/ The range of remedies available under a civil suit are broad, whereas a criminal misdemeanor conviction only results in a fine and an order to repair, which is seldom

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35/ Ibid., p. 844.

36/ Ibid.

37/ Kathryn Rundle, testimony, Hearing Transcript, p. 847.

monitored. In a civil case, the judge may order that the remedy applies not only to the named landlord, but also to successors, agents, employees, assignees, and lessees. 38/

Although the SAO can bring civil suit against landlords, the office's staff is too small to make the remedy effective. Kathryn Rundle, Deputy Assistant Chief State Attorney, pointed out the difficulty of vigorous enforcement by the SAO:

> Ms. Rundle. At the county court level...we have one attorney that handles specifically the intake, any of the housing code enforcement agencies go to him and he files the case. Those cases are then distributed blindly through the county court systems and we have five prosecutors that prosecute those misdemeanors at the county court level. Of course, they are also prosecuting the batteries, aggravated assaults, lotteries, prostitution, all the other misdemeanors that are occurring in Dade County.

38/ Ibid., p. 851.

> Counsel. Are you the only person currently having responsibility for civil housing cases?
>
> Ms. Rundle. Yes, at the present time.
>
> Counsel. Do you think that's adequate staffing?
>
> Ms. Rundle. Well, the problem is so great that in housing...the criminal area, I think that, of course, we need to have the entire office staffed. We need more people to work in all those areas. 39/

There are not enough government resources and staff allocated to enforcement of minimum housing standards. The NRD does not have the necessary enforcement power and must rely on the State Attorney's Office (SAO). The SAO, although it has sufficient legal authority, does not have enough personnel assigned to monitor and enforce housing standards effectively. 40/

39/ Ibid., pp. 848-49.

40/ According to the State Attorney's Office, inadequate funds caused the allocation of insufficient personnel to this enforcement function. Janet Reno to Paul Alexander, April 15, 1982, Appendix B (hereafter cited as Reno letter).

Rigorous enforcement could result in better housing conditions. Continued enforcement could force landlords to maintain their housing units in standard condition. Property maintenance is expensive and a continuing responsibility. In some cases, landlords with multiple violations may sell a rental property rather than seek to maintain it. The sale of a property may be used as a means of avoiding liability for housing code violations. 41/

Criminal penalties imposed on slum landlords rarely are substantial or have any serious rehabilitative effect on the property in question. 42/ Slumlords seldom receive prison sentences. In 1978, 280 code enforcement cases were filed in the county court, which levied a total of $10,234 in fines and $2,606 in court costs. This represents an average of $46.25 in cases where the landlord was assessed court costs and $36.95 in fines without court costs. 43/ Fred Dellapa, education and training director for the Eleventh Judicial District of Florida, suggested possible explanations for the low fines:

41/ Ibid., pp. 850-51.

42/ Miles Testimony, Hearing Transcript, p. 862.

43/ Fred Dellapa, testimony, Hearing Transcript, p. 853.

Basically, judges don't have a broad enough knowledge of the whole area of housing and all its interrelations...[S]ome of them... feel...why should someone be in court on a criminal matter for not enough paint on the walls or a toilet that doesn't flush properly. A lot of them also have the idea..."well if I do something heavy to this person,...[such as impose a fine that could be as high as]...$500 per unit and you've got a 25-unit building, that has 120 counts, that's a lot of money."

He feels that "If I put a fine like that per count maximum, the person is going to dump out of the building, just leave it. What happens to all those people? They go out into the street."

Of course, the other side of the coin is some of the judges, and one of them said this quite recently, "I ought to close this building and condemn it." There were 1,300 people in that building....What do you do then? Where do you go? You point at a 0.5 available rental rate in Dade County...in

> low-income rentals. It is probably even less than that. It is, in fact, nonexistent. 44/

Although city and county officials recognize the danger and harmful results of housing code violations, enforcement remains a very difficult problem. Imposing minimum fines for violations will not necessarily result in corrective repairs. The landlord often finds it far less expensive simply to pay a fine. Legal action is time-consuming, for units of local government and consumers. Elected officials have not ensured allocation of the resources needed to enforce the housing code. Authorities are hesitant to penalize landlords severely since this could result in the sale or demolition of needed housing units. 45/

44/ Ibid., pp. 853-54.

45/ Eugene Miles, testimony, Hearing Transcript, p. 845.

CHAPTER IV

ECONOMIC DEVELOPMENT: THE MISSING PARTNER

During the 1960s, civil disturbances in American cities focused attention on the plight of poor and black people in urban areas. Those groups were not then nor, as Miami demonstrates, are they now equal participants in the economic mainstream. In Miami, present-day discrimination and the lingering effects of past discrimination continue to discourage black entrepreneurs from starting or expanding businesses. It remains extremely difficult for blacks to obtain venture and operating capital.

Recognizing the barriers to economic activity and job creation in the central cities, the Federal government developed programs and policies to promote revitalization. Urban renewal, model cities, and community development each attempted to remove blight, build new housing, and attract new business to the ghettos. Although these programs had specific benefits for a number of individuals in terms of a better house or job, the programs, as implemented in Miami, did not overall significantly improve economic conditions for the black community.

Dewey Knight, assistant county manager of Metropolitan Dade County, faulted the urban renewal program for its zeal in razing housing without adequately planning for the displaced occupants:

> It planned on replacing housing and in that process it cleared acres and acres of land, it cleared away thousands and thousands of people....
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> There was a very swift movement in terms of tearing down but it was very slow movement in terms of rebuilding units, and then when they were rebuilt, the people that had previously occupied the area had either resettled in other places or couldn't afford to get back.... 1/

Knight noted that the Model Cities program was supposed to address the problems urban renewal and other programs had created. Model Cities targeted a full range of problems--housing, education, transportation, water and sewer, providing $9 million a year in seed money for a 9.7 square mile area where more than 150,000 people lived. Knight criticized the implementation of changing Federal urban policies in Miami:

> [A]s the program was beginning to bear some fruit, with its ups and downs and successes and failures, along came another

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1/ Dewey Knight, testimony before the U.S. Commission on Civil Rights, hearing, Miami, Florida, Dec. 8-11, 1980, transcript (hereafter cited as Hearing Transcript), pp. 761-64.

> administration that decided it was not even going to run the final year of [the Model Cities] program. Now we have the community development [block grant] program which, instead of concentrated resources and attempting to develop one area, tended to disperse resources into 26 areas. 2/

Finding 4.1: The effects of past and present discriminatory practices continue to inhibit the entrance of black entrepreneurs into the economic mainstream of the Miami-Dade community.

As previously illustrated, blacks in Dade County have limited employment opportunities in both the public and private job market. Barriers to full participation in the economic life of Dade County, however, are not restricted to employment. Discriminatory forces also limit opportunities for independent black business men and women. Consequently, Dade County's black entrepreneurs are few in number and generally own small and struggling businesses. While the number of black-owned businesses rose 40% from 1972-1977, black businesses in Dade County over the same period employed 25% fewer people. 3/ In

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2/ Ibid.

3/ Janus Associates, Economic Adjustment Plan for City of Miami and Dade County (undated), p. V-3.

1977, Miami's 2,148 black businesses, supported only 380 salaried employees. 4/ A survey of gas stations showed that between 1960 and 1979, the percentage of black owners or operators declined from 27% to 9%. 5/

The primary reason for the lack of growth in the size and number of black commercial enterprises is the inability of black entrepreneurs to obtain sufficient venture capital to start businesses and operate them through the initial slow, non-profitable stage. When blacks are able to obtain loans, they often are undercapitalized. As a result, small temporary shifts in their markets can leave them without the means to continue in operation. No data have been compiled to document the number of loan applications by potential black entrepreneurs whom commercial financial institutions and the Small Business Administration have turned down. No one in Miami, however, disputes the fact that black entrepreneurs find it exceedingly difficult to get loans.

The three major commercial loan qualifications most lending institutions consider are collateral, equity in the business,

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4/ James Risen, "Bleak Picture painted of Miami's Black Business," Miami Herald, January 14, 1981, p. D-1.

5/ Jan B. Luytjes and Anne Yuhasz, Black Entrepreneurship in Dade County: An Exercise in Understanding, Florida International University School of Business and Organizational Sciences (June 1979), pp. 9-10.

and track record. In each of these areas, black applicants, due to past discriminatory practices that kept them from competing successfully in the mainstream economy, are less likely than other applicants to qualify for loans. Collateral is a problem for the black potential entrepreneur because he or she is unlikely to have accumulated savings or property holdings of significant value. Few black firms can show significant equity because their businesses tend to be very small. 6/ George Greene, President of the Miami-Dade Chamber of Commerce, explained the dilemma:

> [T]he problem that I see it as, if the private sector uses the same criteria in which they loan white businessmen money, then black businessmen will never receive any money or commitments. We don't have the equity. We're not collateralized to the degree they would expect, and as a result we're not going to get the loans. 7/

The problem for black potential entrepreneurs is a circular one, simply put, that one has to have money in order to borrow money.

6/ Stanford Williamson, Executive Director, Southeast Florida Business Development Center, testimony, Hearing Transcript, pp. 881-82.

7/ George Greene, testimony, Hearing Transcript, p. 907.

Past practices of racial discrimination denied blacks opportunities to obtain business experience in the white-dominated private sector. Now the lack of sufficient experience is used as a reason for rejecting loan applications from blacks. As one unsuccessful applicant, a management consultant seeking to start a new business, described:

> The loan that I applied for was turned down because of lack of sales experience....[T]he product I have will sell itself. I have a ten minute cassette that demonstrated the product and how it could be used and any professional material handler would have bought the product based on that product selling itself. My experience [is] in management, which I would think is more important than me being a sales person, I can buy knowledge. I can buy a salesman.... I think the merit of the product and the market it has should play a bigger role more so than can I sell a product. 8/

8/ Donald Cook, President, DFC Management Consultants, testimony, Hearing Transcript, p. 772.

Regardless of the steps that financial institutions take to encourage loan applications from minorities, lending will not increase signficantly unless the evaluation criteria change.

Often the crucial factor in a loan decision is the subjective opinion of the loan officer based upon personal contact with the applicant. One successful black businessman noted the importance of creating and maintaining relationships between the banking officials and loan applicants. In his words, "Friends in banking make a difference and blacks have not had this luxury." 9/ Blacks often may be denied loans because bankers, being free to exercise subjective judgment, may act on personal biases that might have racial underpinnings.

Some area businessmen, white and black, contend that the loan situation for blacks would improve if there were a black-owned and -operated financial institution in Dade County. A black-owned bank might well adopt policies and practices that are more conscious of how discrimination has prevented blacks from becoming financially successful in the past. Several banking associations, including the Miami-Dade Urban Bank Group, support the establishment of a black-owned

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9/ Sonny Wright, President, Universal Real Estate, Inc., Interview in Miami, Fla., Oct. 15, 1980.

bank. 10/ The lack of capital in the black community is the major stumbling block to starting such a bank. 11/

The failure of Dade County's black entrepreneurs to secure venture capital or to establish a black-owned financial institution fuels their pessimism:

> We don't have a black bank and how do we get a start to borrow money. We can't. With no economic base and no means of obtaining capital, whether...we're trying to initiate a new business or extend the business that we're in. There's no way for a black business to survive, especially in these economic times. 12/

The director of the Small Business Development Center at Florida International University (FIU) believes the low participation by blacks in Center seminars and technical assistance programs stems from disillusionment with the "system" lending to cynicism about the potential value of the Center's

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10/ Charles F. Johnson, Community Reinvestment Officer and Assistant Vice President, Amerifirst Federal Savings and Loan Association, testimony, Hearing Transcript, p. 792.

11/ Ibid.

12/ Greene Testimony, Hearing Transcript, p. 908.

services. 13/ According to George Greene, president of the all-black Miami-Dade Chamber of Commerce:

> [If] you come on with a program right now and, if you announce the program that you had $300,000 to loan...with no strings attached, I doubt if you would have people lined up to borrow the money because we have been duped, misled, lied to, and we're just at a point of just total utter frustration at the types of programs that have been brought in.... 14/

Black professionals are concentrated in the public sector in Miami and are noticeably lacking as mid- and upper-level managers in the private sector and as small business entrepreneurs. 15/ Stanford Williamson, who directs the South Florida Business Development Center, an Urban League-sponsored management and technical assistance program funded by the Minority Business Development Agency, attributes this to an

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13/ Marvin Nesbet, Acting Director, Small Business Development Center, Florida International University, interview in Miami, Fla., Nov. 5, 1980.

14/ Greene Testimony, Hearing Transcript, p. 912.

15/ See Chapter 5, Employment, of this report.

unwillingness to take risks. 16/ George Greene described black teachers who might otherwise become entrepreneurs:

> These are...black people that have traditionally gone to the education side—teachers and what have you, for the security of a $14 or $15 thousand a year job, that have the business acumen to run a business second to none.
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> The auto mechanic teacher that teaches in a vocational school, why shouldn't he have one of the biggest auto mechanic repair shop[s] on Biscayne Boulevard.... 17/

Dr. Jan Luytjes, a professor at the FIU School of Business and Organizational Science, has undertaken a study of what happens to educated blacks in Miami. His study documents their migration to areas such as Atlanta and Washington, D.C., because of a lack of opportunities in Dade County. Dr. Luytjes believes there is "motivation for blacks to leave the area." 18/

16/ Stanford Williamson, Executive Director, Southeast Florida Business Development Center, interview in Miami, Fla., Sept. 16, 1980.

17/ Greene Testimony, Hearing Transcript, p. 946.

18/ Dr. Jan B. Luytjes, Professor, School of Business and Organizational Sciences, Florida International University, Oct. 9, 1980.

Several witnesses told the Commission that insurance "redlining" is a common problem for black entrepreneurs. Mrs. Athalie Range, a prominent black businesswoman and former City Commissioner, testified, "[for] those of us who own businesses in the predominantly black section, it is exceedingly hard to get full insurance coverage. One must go far and look a long, long time to get the proper insurance coverage, so along those lines I think that redlining is very, very much with us." 19/

According to one area insurance executive, there has been "reluctance to insure in black areas." 20/ Insurance costs for the Liberty City area are two to four times higher than the costs in other parts of Miami, and the bureau that promulgates insurance rates sets a surcharge for the area. 21/ In one instance, the insurance premiums of a supermarket looted during the 1980 riots increased from $3,000 to $5,000 after a damage claim was collected. 22/ In his testimony before the Commission, Dade County Manager Merritt Stierheim took note of

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19/ Athalie Range, former Miami City Commissioner, testimony, Hearing Transcript, p. 769.

20/ Earl Litnick, Vice President, Poe & Associates, General Insurance Brokerage, interview in Miami, Fla., Sept. 18, 1980.

21/ Ibid.

22/ Ibid.

the problem and suggested that "the [State] insurance commissioner could set up [a program] that...would provide for the insurance in the high risk areas that I think now are redlined...." 23/

Finding 4.2: Although the private sector has initiated programs to encourage the development of black businesses, such programs have not had any significant effect.

The Greater Miami Chamber of Commerce is the primary organization of the private commercial sector in Miami. In addition, minority entrepreneurs have formed three smaller chambers--the Miami-Dade Chamber of Commerce (black), the U.S. Chamber of Commerce (black), and the Latin Chamber of Commerce (predominantly Cuban). The Greater Miami Chamber has coordinated with the Miami-Dade Chamber on several economic development projects with no demonstrable success. According to the director of a minority small business technical assistance center, "[T]he fact that we have three chambers is a reflection of the social problems in the community. We have a community that is divided into segments, and there is just not enough cooperation among the three." 24/

Following the civil disturbances in May 1980, the Greater Miami Chamber and the Miami-Dade Chamber developed two joint

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23/ Merritt R. Steirheim, Dade County Manager, testimony, Hearing Transcript, p. 1101.

24/ Williamson Testimony, Hearing Transcript, pp. 896-97.

projects. The goal of the first, the Black Enterprise Loan Program, is to increase the number of black businesses in Dade County by expediting applications for SBA-guaranteed loans. The Greater Miami Chamber has obtained pledges from local financial institutions to set aside money for this program. Interested black entrepreneurs or potential entrepreneurs submit their applications to the Miami-Dade Chamber, and its Loan Review Committee evaluates the applications and forwards those of eligible candidates to the Greater Miami Chamber. If approved by that Chamber's Economic Development Committee, the applications go to members of the banking consortium with the understanding that both Chambers will provide managerial and technical assistance to the applicants on a regular basis once the loans are approved.

Several sectors of the business community have criticized the Black Enterprise Loan Program. 25/ As of November 1980, the Greater Miami Chamber had received 200 loan inquiries, considered 16, and referred 2 to a bank, which rejected both. 26/ Entrepreneurs go through an additional step, having both Chambers review their applications, but otherwise there is

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25/ See Williamson Interview, September 16, 1980; Wright interview, October 15, 1980; and Bernard Layne, District Director, U.S. Small Business Administration, interview in Coral Gables, Fla., Nov. 6, 1980.

26/ Layne Interview, November 6, 1980.

no change in the same basic criteria or standards, such as collateral and equity, that were barriers in the past. The project's only apparent accomplishment has been to add another layer of frustration. The Small Business Administration had to make a public announcement to counter the impression that all applicants for SBA guaranteed loans must go through the Chamber screening process. 27/

In their second joint project, the two Chambers contracted with the City Venture Corporation to develop a holistic revitalization plan for Liberty City. City Venture, a Minneapolis-based for-profit corporation, initiates, plans, and manages the implementation of large scale job creation/urban revitalization projects, approaching the tasks as a total process. 28/ City Venture's three underlying prerequisites for a successful effort are the cooperation of the local community, a coalition of all sectors (business, government, neighborhood, religious organizations, organized labor, educational institutions and the non-profit sector), and the understanding that the most important source of jobs is small business, not big business.

27/ Ibid.

28/ City Venture Corporation, A Proposal for Preparation and Initial Implementation of a Job Creation and Community Revitalization Strategy for Liberty City, January 1981, pp. 1, 17-22, 34.

The Greater Miami Chamber of Commerce raised $42,500 for City Venture's initial report. City Venture received $380,000 in Federal grants to produce details of its plan. Implementing the proposed five-year plan would cost more than $10,000,000, some of which would come from City Venture's parent company, Control Data Corporation. The Greater Miami Chamber, however, did not continue City Venture's contract when it expired in May, 1982. 29/ The Chamber's Business Revitalization Action Committee has developed an economic development plan that it is now seeking private sector funds to implement. 30/

Finding 4.3: By concentrating the great majority of its Federal Community Development Block Grant (CDBG) funds on structural improvements, Miami has missed opportunities to use its CDBG funds to promote neighborhood commercial and economic revitalization.

Since 1975, the city has funded a large variety of programs and projects using monies from the Community Development Block Grant (CDBG) Program, administered by the U.S. Department of Housing and Urban Development. 31/ This revenue sharing

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29/ Miami Herald, May 6, 1982, p. 4C.

30/ Greater Miami Chamber of Commerce, Business Revitalization Action Committee, Report on New Enterprise Center: An Action Plan for the Economic Revitalization of Liberty City, April 14, 1982 (maintained in Commission files).

31/ Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633 (codified at 42 U.S.C. §§5300-5317 (1976 and Supp. III 1979)).

program, which was created by Title I of the Housing and Community Development Act of 1974, as amended, 32/ replaced several categorical HUD assisted urban renewal programs. 33/

The purpose of the CDBG program is to promote the development of "viable urban communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income" 34/ including "[t]he alleviation of physical and economic distress through the stimulation of private investment and community revitalization in areas with population outmigration, or stagnating or declining tax base." 35/ A locality may use program funds to do such things as acquire real property, acquire or construct certain public facilities, enforce building codes, and relocate and assist persons displaced by community development projects. 36/ As

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32/ 42 U.S.C.A. §§5303(a)(1) (1976).

33/ U.S., Department of Housing and Urban Development, Department of Commerce, Local Economic Development Tools and Techniques: A Guidebook for Local Government (1980), p. 13.

34/ 42 U.S.C. §5301(c) (1976 & Supp. III 1979).

35/ *Id*. §5301(c)(8).

36/ *Id*. §5305.

the U.S. General Accounting Office noted in a recent report, the flexibility and broad applicability of the program lends itself to pressure from politicians and community groups to fund projects that are arguably not related to community revitalization of inner cities. 37/

Between 1975 and 1981, the city received $50,296,663 in CDBG funds 38/ and allocated approximately $17,987,000 in CDBG funds to the four predominantly black areas affected by the 1980 civil disturbances. 39/ An additional $167,000 was allocated to three of the areas as part of citywide community development projects. 40/

37/ U.S., General Accounting Office, Report to the Ranking Minority Member, Committee on Appropriations, United States Senate, The Community Development Block Grant Program Can Be More Effective In Revitalizing The Nation's Cities (1981), p. 9.

38/ Terry Griffin, Administrative Assistant 1, Miami, Florida, Community Development Department, telephone interview, Mar. 25, 1982.

39/ Miami, Florida, Planning Department, "Approximate city of Miami Allocations In Areas Impacted by Recent Civil Disturbances 1968-1980" (June 25, 1980) (hereinafter cited as "Approximate city of Miami Allocations") (on file at the U.S. Commission on Civil Rights, Office of General Counsel). The target areas include Coconut Grove, Edison/Little River, Model City, and Overtown.

40/ Ibid. The document indicates an approximate total allocation to these target areas, including other Federal as well as local funds of $46,589,000 from 1968 through 1980.

The CDBG funds allocated to the predominantly black communities were budgeted for the following types of activities: 41/ $4,274,500 (approximately 24 percent) for housing rehabilitation or code enforcement; $2,910,410 (approximately 16 percent) went to building or improving parks 42/ $4,610,486 (approximately 26 percent of the available CDBG monies) went for street improvements; $1,675,229 (approximately 9 percent) went to land acquisition; $1,429,000 (approximately 8 percent) went to certain redevelopment projects; and $997,950 (approximately 6 percent) for social services.

In contrast, the city's neighborhood economic development strategy, discussed in the next section, was allocated only $711,000 (approximately 4 percent). 43/

41/ Miami, Florida, Planning Department, "City of Miami Community Development Block Grant Program 1975-1981, Coconut Grove Target Area" (June 25, 1980); Miami, Florida, Planning Department, "City of Miami Community Development Block Grant Program 1975-1981, Edison/Little River Target Area" (June 25, 1980); Miami, Florida, Planning Department, "City of Miami Community Development Block Grant Program 1975-1981, Model City Target Area" (June 25, 1980); Miami, Florida, Planning Department, "City of Miami Community Development Block Grant Program 1975-1981, Overtown Target Area" (June 25, 1980) (Documents on file with the U.S. Commission on Civil Rights.)

42/ Ibid. This figure does not include local parks for people funds program 1972-1980 which allocated $5,422,000 for parks in the four predominantly black target areas. "Approximate city of Miami Allocations."

43/ Ibid.

While completely legal, it is questionable whether the heavy concentration of funds in capital and structural improvements such as parks and street improvements, can reasonably be expected to produce long term economic revitalization of these depressed communities.

Finding 4.4: The City of Miami allocated an inadequate portion of its Community Development Block Grant funds for developing a strategy to revitalize the economic life of the city's low-income and black communities. By dispersing CDBG funds for neighborhood economic development among 11 different organizations, the city further diluted the program's effectiveness. The Miami Capital Development, Inc., appears incapable of meeting black entrepreneurs' critical need for working capital.

On July 1, 1980, the city of Miami began implementing a strategy for neighborhood economic development funded entirely with CDBG monies. As part of a larger citywide economic development strategy, the program includes the city departments of trade and commerce development, planning, and community development, a citywide development corporation, and community-based organizations.

The city's department of trade and commerce development oversees two specific programs. Under its neighborhood development program, the city is funding 11 community-based organizations in its 8 community development target areas. Each organization is to receive $50,000 of CDBG monies, just enough to pay the salaries of a director and secretary and to cover administrative expenses. 44/ These organizations are supposed to coordinate the city's economic development efforts at the local level and to stimulate investment and revitalized economic activities in low- and moderate-income areas. In that capacity, they will provide outreach to neighborhood businesses, form or assist merchant associations, compile information about economic development, and refer those entrepreneurs who need financial assistance to other organizations, including the Miami Capital Development corporation. 45/

The Miami Capital Development, Inc., is a quasi-public delegate agency, which the city established to provide financial packaging, business development, and technical assistance services. It is seeking a license to establish, as a wholly owned subsidiary, a local development

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44/ Tony E. Crapp, Jr., testimony, Hearing Transcript, pp. 873-874; Miami, Fla., City of Miami Neighborhood Economic Development Program Proposal Package (1980) (hereafter cited as Proposal Package), p. 12. The city of Miami has also been funding the New Washington Heights Development Conference to do economic development in the Overtown community development target area since approximately 1975. Joseph Middlebrooks, testimony, Hearing Transcript, p. 956.

45/ Proposal Package, p. 4; Crapp Testimony, Hearing Transcript, pp. 872-73.

corporation 46/ to provide SBA leveraged loans for land, building, equipment, and machinery. 47/

The city spent $1 million, or less than 10 percent of its 1980-1981 CDBG funds, on its economic development strategy. The department of trade and commerce development received $250,000; Miami Capital Development, Inc., received $200,000; and approximately $550,000 was divided among the 11 community-based organizations. 48/

Tony E. Crapp, Sr., the director of the Business Development Division of the Miami Department of Trade and Commerce Development, told Commission staff he originally had proposed that the city geographically target its CDBG economic development funds. The funds, however, were so politically appealing that the city commission decided to fund a community

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46/ Proposal Package, pp. 4-5.

47/ 15 U.S.C. §695 (1976). Section 502 of the Small Business Investment Act of 1958, as amended, authorizes the U.S. Small Business Administration to lend funds to a "Local Development Company" (LDC), a profit or nonprofit corporation whose purpose is to stimulate industry in and near its community. U.S., Small Business Administration, Miami, Florida office, Local Development Company 502-Financing Program, July 30, 1980, p. 1.

48/ Crapp Testimony, Miami Hearing, pp. 873-874; City of Miami, Fla., Community Development Application (1980-81 (undated), (hereafter cited as Community Development Application), pp. 53-54.

development corporation in each target area. Political divisions in several of the target areas led the city commission to fund additional organizations in some of the areas. 49/

The susceptibility of CDBG funds to political dispersal is not a phenomenon unique to Miami. The U.S. General Accounting Office has noted that the lack of Federal regulation brings the allocation of scarce CDBG funds under intense local political pressure as everyone vies for a piece of the "few strings attached" Federal money. 50/ Further, although ambitious in scope, Miami Capital Development Inc., through its local development corporation, will be unable to provide the all-important working capital for black entrepreneurs.

Without mechanisms to overcome the unique structural barriers black entrepreneurs face, the black community will remain isolated from the economic mainstream dominated by white and Latin business. It is too early to judge whether the city's economic development strategy can halt the economic

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49/ Interview in Miami, Florida, Oct. 10, 1980; Crapp Testimony, Hearing Transcript, p. 874.

50/ U.S., General Accounting Office, Report to the Ranking Minority Member, Committee on Appropriations, United States Senate, The Community Development Block Grant Program Can Be More Effective In Revitalizing The Nation's Cities (1981), pp. 7-8.

decline of Miami's black community. Early indications are that the strategy may help white and Latin entrepreneurs who already have gained access to existing financial institutions and business development programs. For example, according to the executive director of Miami Capital Development, Inc., preliminary figures showed that of the 44 business loans approved or being processed between July and October 1981, 4 were for blacks, 25 for Hispanics, and 15 for whites. The total value of the loan applications or approvals packaged by Miami Capital Development, Inc. was $16.7 million. The total value of black loan applications was $875,000 or 5.2 percent. 51/

Finding 4.5: It appears likely that black residents of Overtown will not appreciably benefit from the expansion of the garment industry into Overtown. The redevelopment plan includes no provision to help existing black-owned businesses or black entrepreneurs establish garment industry firms or link up with existing manufacturers' retailers.

On July 23, 1979, the Miami city commission approved a plan to permit the expansion and redevelopment of the city's garment industry 52/ southward into Overtown. 53/ The plan was

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51/ Jose A. Hernandez, Executive Director, Miami Capital Development, Inc., interview in Miami, Florida, Oct. 7, 1980, p. 3.

52/ City of Miami, Fla., Planning Department, Garment Center/Fashion District Redevelopment Plan (1979), (hereinafter cited as Redevelopment Plan), pp. 87-88. The county commissioners approved the plan in 1980.

53/ Redevelopment Plan, p. 6.

presented to residents of the Overtown and Wynwood communities as a means of creating approximately 1,200 new jobs. 54/

The garment industry is the largest industrial employer in Dade County. 55/ The expansion of the garment industry was planned with extensive city and county assistance and significant Federal funding. The entire project is to occur in three phases at an estimated total cost of $10,261,000. 56/

Phase I is expected to cost $5,553,880 in local funds and approximately $1,850,000 in CDBG funds. 57/ The city will acquire approximately 16.59 acres of land during a three-phase land transfer. 58/ The city will remove blighted buildings and make certain improvements in the infrastructure of

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54/ Matthew Schwartz, Chief of Advance Planning, City of Miami Planning Department, testimony, Hearing Transcript, pp. 959, 961; City of Miami, Fla., Proposal To The South Florida Employment And Training Consortium For Garment Center/Fashion District Vocational Training Program (September 1980), (hereinafter cited as CETA Proposal) pp. 16-18.

55/ Schwartz testimony, Hearing Transcript, p. 958.

56/ Redevelopment Plan, pp. 32-33, 36.

57/ Ibid., pp. 32, 34, 36. Phases II and III are contingent upon the availability of funding and completion of relocation of residents of the targeted area.

58/ Ibid., p. 25.

remaining buildings. 59/ The city then will sell the improved land for private garment industry redevelopment. 60/

Matthew Schwartz, chief of advance planning for the city's planning department, testified that the Garment Center Redevelopment Plan will displace between 253 and 300 housing units and 11 businesses. 61/ The redevelopment plan itself shows that Phase I will displace approximately 200 tenants (190 black), 8 homeowners (4 black), and 16 businesses (10 black owned). 62/

The city's position is that the benefits--the creation of new jobs and the retention of the garment industry--outweigh the costs of displacing Overtown residents. To ensure that the unemployed would have opportunities for the new jobs, the city has applied for a CETA grant to establish a Garment Center vocational training program. 63/ Although the CETA

59/ Ibid, pp. 15-22.

60/ Ibid., p. 25.

61/ Schwartz Testimony, Hearing Transcript, p. 960.

62/ Redevelopment Plan, p. 28.

63/ Schwartz Testimony, Hearing Transcript, p. 959; Redevelopment Plan, p. 20.

proposal was rejected, the city established its own program in conjunction with the public school system. Fifty-six people have enrolled for the training, which does not provide a stipend. The project currently underway has an intensive community recruitment component financed with CDBG funds. 64/

Garment industry manufacturers have reportedly committed themselves to hiring, on a first-come, first-served basis, those who have completed the 16 week training course, which includes on-the-job training. 65/ In addition, the city plans to incorporate into the land disposition documents a requirement that developers make good faith efforts to employ residents of Wynwood and Overtown. 66/ The question remains whether this newest encroachment upon Miami's historical black community will produce the promised jobs for Overtown's residents or whether, as in the past, the community will suffer yet another displacement.

64/ The participants have been 44 percent black, 40 percent Latin, 9 percent Haitian and 7 percent other. To date, 21 percent of the participants have been placed in jobs in the garment industry. Matthew Schwartz, telephone interview, March 18, 1982.

65/ CETA Proposal, Form B, pp. 5, 9.

66/ CETA Proposal, Form B, p. 16.

In the sixties, the garment industry in Miami greatly benefited from the abundant supply of skilled Cuban immigrants who were then willing to work for low wages. 67/ As a result, current employment in the garment industry is overwhelmingly Hispanic and female: 95 percent of industry employees are female, and nearly 94 percent of the women are of Hispanic descent. 68/ After 20 years, the upwardly mobile Cuban immigrants have left a significant labor shortage in the garment industry 69/ despite estimated unemployment rates greater than 30 percent in Overtown and 20 percent in Wynwood. 70/ In the past, manufacturers have trained the entry-level power-sewing-machine operators as they were needed, although this method of training is not economical. 71/

The small number of blacks in the garment industry's work force is not likely to grow significantly in the short run. The proposed training program is to turn out only 180 skilled

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67/ Redevelopment Plan, p. 7.

68/ Redevelopment Plan, p. 67.

69/ Ibid., p. 1. CETA Proposal, Form B, p. 17. One manufacturer reportedly said that there are already 1,000 unfilled jobs in the industry.

70/ CETA Proposal, Form B, p. 2.

71/ CETA Proposal, Form B, p. 11.

operators a year. Of this number, 57 percent are to be residents of Wynwood, which is 62 percent Hispanic and 13 percent black, 72/ while 43 percent are to be residents of Overtown. 73/ Indeed, the CETA intake center is located in Wynwood. 74/ In all, 52 percent of the trainee slots are targeted for Hispanics and 48 percent for blacks. 75/

The wages paid to starting sewing-machine operators is close to the minimum wage, which in 1980 ranged from $3.10 to $3.20 per hour. The wage paid during the CETA training would be $3.40 per hour. Prior to January 1, 1981, the manufacturers were to pay graduates of the program $3.25 an hour (15 cents below the training wage). Since that date, the rate has risen to $3.50 per hour in accordance with the increase in the minimum wage. 76/ Although low by American standards, these wages may seem attractive to immigrants who are used to

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72/ Metropolitan Dade County, Fla., Office of Community Development Coordination, Community Development and Housing Needs: 3 Year Community Development Plan Volume 1, Profile of Needs, Wynwood Target Area (March 1978), p. 6.

73/ Schwartz Testimony, Hearing Transcript, p. 962.

74/ CETA Proposal, Form A, p. 3.

75/ Ibid.

76/ Ibid., Form B, pp. 6, 8.

hourly wage rates as low as one-tenth the American minimum wage. 77/

The redevelopment plan does not link the garment center redevelopment project with any of the city's efforts to promote black business development, according to Joseph Middlebrooks, an architect and planner.

> The expansion of the garment district into that area is really an encroachment on that area....I am not in fact sure, but I would believe that it is going to do the same thing that other developments have done when they encroached on that area. I didn't hear the response with reference...to what has been done by way of requesting those persons in the garment district to develop black businesses in the garment district. I didn't hear anything with reference to merging or integrating that effort sufficiently with any of the existing [city business development]

77/ Community Development Application, p. 129.

> programs....[T]he more significant aspect of [the] expansion of a business district into that neighborhood is to assure that black businesses also are a part of that expansion.... 78/

Finding 4.6: Although the Small Business Administration provides financial assistance to small businesses by making direct loans and by guaranteeing bank loans, black entrepreneurs in Miami receive inadequate assistance of either type.

The U. S. Small Business Administration (SBA) was established in 1953 "to preserve free competitive enterprise," to assure small business a "fair proportion" of government sales and purchases, and to enhance the national economy. 79/ The SBA provides small businesses with direct loans, loan guarantees, management and technical assistance and Government procurement assistance. 80/ The agency also licenses and regulates investment companies that provide equity and venture capital assistance to small businesses. 81/

78/ Joseph Middlebrooks, testimony, Hearing Transcript, pp. 976-977.

79/ Small Business Act of 1953, Pub. L. No. 163-282, §II, 67 Stat. 233 (codified at 15 U.S.C. 632-639 (1976 and Supp. III 1979)).

80/ 13 C.F.R. §§119.81, 120.2, 121.3-8 (1981).

81/ STAFF OF HOUSE COMM. ON SMALL BUSINESS, 97th Cong., 1st Sess., SUMMARY OF SBA PROGRAMS 1 (Comm. Print 1981).

Direct and guaranteed loans are available through two loan programs, 82/ the section 7(a) business loan program and the economic opportunity loan program. 83/ The latter program is particularly important to low-income groups and minorities. One of its goals is to preserve or establish small businesses "located in urban and rural areas with high proportions of unemployed or low-income individuals or owned by low-income individuals or those, who due to social or economic disadvantage, have been denied the opportunity to acquire adequate business financing through normal lending channels on reasonable terms." 84/

By law, SBA will not extend financial assistance "unless the assistance applied for is not otherwise available on reasonable terms from non-Federal sources." 85/ Further, "[i]t

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82/ Bernard Layne, District Director, SBA, testimony, Hearing Transcript, p. 901.

83/ 13 C.F.R. §§119.2, 120.2 (1981).

84/ 13 C.F.R. §119.2(b) (1981). See Layne Testimony, Hearing Transcript, p. 901-902.

85/ 15 U.S.C. §636(a)(1) (1976).

is the policy [of SBA] to stimulate and encourage loans by banks and other lending institutions." 86/ For all loans, SBA must have "reasonable assurance" that the loans will be repaid, 87/ although certain credit standards differ for Economic Opportunity Loans. 88/

Bernard Layne, district director of the SBA in Coral Gables, Florida, testified that the guaranteed loan program accounted for over 90 percent of SBA's financing activities. 89/ Under this program, a participating bank forwards a loan to the SBA. 90/ The bank approves the loan on the condition that SBA agrees to repay up to 90 percent of the outstanding loan and accrued interest if the borrower defaults. 91/

86/ 13 C.F.R. §120.2(b) (1981).

87/ 13 C.F.R. §§119.51(c); 120.2(c) (1981); Layne Testimony, Hearing Transcript, pp. 929-930.

88/ 13 C.F.R. §119.2(c) (1981). For example, inadequate collateral is not a reason to deny financial assistance "unless the applicant refuses to pledge whatever worthwhile collateral is available." Id., §.31(d).

89/ Layne Testimony, Hearing Transcript, p. 915.

90/ Ibid., pp. 929-930.

91/ 13 C.F.R. §122.10(a)(1) (1981).

Direct loans, on the other hand, comprise a very small amount of SBA financing. According to Mr. Layne, "[u]nfortunately, the direct loan program has such limited funding that we are not ever in a position to touch more than one miniscule portion of those who are applying for assistance." 92/

SBA data for Dade County indicate that during fiscal years 1968 through 1980, the agency made a total of 780 direct loans--37 to blacks, 469 to Hispanics, and 267 to nonminorities. Of 1,148 guaranteed loans, 58 went to blacks, 525 to Hispanics, and 557 to nonminorities. During this 12-year period, SBA expended $88.5 million in Federal funds for regular business loans. Of this amount, 5.3 percent went to blacks, 35.7 percent to Hispanics and 58.3 percent to nonminorities. SBA also expended $22.3 million for 1,519 economic opportunity loans for low-income, economically-disadvantaged persons, providing blacks with 175 loans and 9.7 percent of the money, Hispanics 1,285 loans and 87 percent of the money and nonminorities 55 loans and 3.1 percent of the money. 93/

92/ Layne Testimony, Hearing Transcript, p. 939.

93/ Documentation on file with the U.S. Commission on Civil Rights.

One of the difficulties with the guaranteed loan programs is that banks must submit the applications. And in Miami, banks are making very few loans to blacks. 94/ Mr. Layne testified that there are a limited number of qualified loan applications from blacks 95/ and that the problems the black community faces in obtaining financing--lack of sufficient management skills and equity--are endemic to small businesses generally. 96/ The number of Dade County banks participating in the guarantee program may be one factor. Mr. Layne characterized the participation by banks as "reasonable". 97/ George Green, president of the black Miami-Dade Chamber of Commerce and owner of George Green Insurance and Real Estate, disagreed:

> It is quite evident that the banks don't want to cooperate or make the loans. Banks traditionally in this town don't like SBA. There is a great deal of skepticism about

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94/ Layne Testimony, Hearing Transcript, pp. 929-930.

95/ Ibid., pp. 917-18.

96/ Ibid., p. 915.

97/ Ibid. Documents provided by the Small Business Administration after the hearing indicate that the SBA approved 645 guaranteed loans submitted by 80 Dade County banks between 1975 and 1980. Bernard Layne, letter to Christopher Bell, October 16, 1981, maintained in Commission files.

> SBA. First of all, the interest rates, banks think--and this is a myth...the interest rates are below subpar, they are not favorable, that the paperwork is horrendous, and that to finally foreclose a loan just creates a great deal of problems with the government and banks will say it is much easier for me to out and loan money to a larger firm and not have to contend with all of this paper work and all of this SBA stuff. 98/

Most white bankers in Dade County, Mr. Green noted, have always been reluctant to lend money to blacks, and now, particularly after the May 1980 civil disturbances, loans to the black community are few. He said:

> I had a chance to meet with some bankers approximately 2 weeks ago, and they informed me, "George, don't forget, you rioted out there. You killed people out there. We don't drive through your neighborhoods anymore. We didn't loan you money in the

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98/ George Green, testimony, Hearing Transcript, pp. 924-925.

> first place. When we had the white businesses out there we were reluctant. Do you think we're going to loan you money now?" 99/

Black businesses that get loans from or through SBA must meet the agency's credit criteria. The SBA uses basically the same credit criterion--the financial ability to repay the loan--as that of private lending institutions. 100/ The difficulty black entrepreneurs have in meeting the traditional criteria, particularly equity and collateral, hampers their ability to participate in SBA's guaranteed and direct loan programs.

Charles Johnson, community reinvestment officer at AmeriFirst Federal Savings and Loan Association in Miami, noted that his bank had "mounted an aggressive marketing program and...we had to tailor and revise some of our policies in order to enhance the flow of funding going into the black community." 101/

One witness described the SBA assistance he experienced as an entrepreneur attempting to rebuild his business after it was destroyed. In 1969, William Calhoun began a tailor shop with $10,000 in savings. By the end of 1971, his shop had a

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99/ Green Testimony, Hearing Transcript, pp. 912-913.

100/ 13 C.F.R. §§119.5(c); 120.2(c) (1981).

101/ Charles Johnson, testimony, Hearing Transcript, p. 765.

business volume of $250,000. In 1972, he sustained a series of burglaries and a fire that burned his shop to the ground. 102/

> At that time I went to the SBA and other organizations to get assistance. I could find none. Finally, after continually going to the SBA office, I was given the procedures and was instructed that I had to reconstruct records and those types of things in order to apply....During this period of time I was under the impression that when this was done I would in turn qualify for assistance, so I put all my energies in doing this, and...I continued to try to do business because I had a demand and I had the ability to deliver.
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> [A]fter we had reconstructed all of my records, I went through the program of SCORE and was told by them that, sir, you have the ability to assist us to advise other people how to run their business in this type of operation, so after completing our records,

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102/ William Calhoun, testimony, Hearing Transcript, pp. 908-910.

we went back to the SBA only to be informed that the SBA was out of money.

So then we took the same project and we went to all of the banks. We could get no financing from the banks....I could get no assistance....

Now I'm right back....I have now the need for supplies. I cannot get them. First off is because the period of time I went through, I'm asked for collateral; I'm asked for track records, and you have to remember that recordkeeping and track records is developed by your dealings through the bank....

It seems as if what is happening is that a program is being used in order to render service, is being used to deny service. What I am saying is that it seems that certain officials and certain programs, when a person applies for help, or the initial application for a type of services uses that program to deny the services to the person rather than give it to them, knowing that

> with this minimum amount they are destined
> to fail. 103/

Finding 4.7: The SBA District Office does not keep or monitor statistics on American black participation in its financial assistance programs or its training programs.

The South Florida district office of the SBA maintains records of the loans it administers, but does not monitor the race or ethnicity of applicants or recipients for each of the 24 counties within its jurisdiction. Moreover, the racial and ethnic categories do not distinguish black Americans from refugees and foreign immigrants. According to Mr. Layne, "Haitians, Vietnamese, Cubans, and blacks normally fall into the same category." 104/ SBA does keeps visual count of participants in its training programs but places blacks and Hispanics together under the rubric of "minority." 105/

Finding 4.8: Black businesses have had minimal involvement in the design and construction of Dade County's rapid transit system.

Metro Dade County is implementing a transit improvement program at a cost of $920 million. 106/ As of September 30, 1981, the Federal Government, through the Department of

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103/ Ibid., pp. 909-911.

104/ Layne Testimony, Hearing Transcript, p. 920.

105/ Ibid., p. 943.

106/ John Dyer, Transportation Coordinator, Metro Dade Office of Transportation Administration, testimony, Hearing Transcript, p. 964.

Transportation's Urban Mass Transportation Administration, had provided Metro Dade County with $670,849,000 for the program. This figure includes $579,190,000 for the rapid transit system; $81,135,000 for the bus system; and $10,524,000 for a downtown people mover system. 107/

As a condition for UMTA funds, grantees are required to establish a minority business enterprise program. 108/ This program arose from the Department of Transportation's policy that businesses owned and operated by minorities and women shall "have the maximum opportunity to participate in the performance of contracts." 109/

Black support in Dade County's 1978 rapid transit referendum was crucial to its passage and to the project itself. Many members of the black community believe that county officials promised jobs and contracts to get the referendum passed and the system built. These promises, many blacks now feel, were empty. 110/

107/ Charles Scurr, senior transportation representative, Urban Mass Transportation Administration, Atlanta, Ga., telephone interview, Aug. 27, 1981.

108/ 49 C.F.R. §23.41(a)(2) (1980).

109/ *Id.*, at §23.43(a)(1) (1980).

110/ Editorial: "Blacks Taken For A Rapid Transit Ride," *The Miami Times*, Oct. 16, 1980; "Blacks Turn Deaf Ear To Transit Promises," Ibid. (clippings on file with the U.S. Commission on Civil Rights).

Black businesses have hardly benefited from the development of the rapid transit system to date. As of September 30, 1980, there were $298,463,849 in total contract commitments, $29,159,792 or 9.77 percent of which had gone to minority business enterprises. Approximately $7,775,970, or 2.6 percent, went to blacks; $14,819,575, or 5 percent, went to Hispanics; and $5,440,561 or 1.8 percent, went to women. 111/ The cumulative figures for the rapid transit and bus system show that as of March 30, 1981, $48,008,000, or 14 percent of the contracts or subcontracts, went to minority businesses. Of that number, black-owned businesses received 2.4 percent (17.5 percent of the minority business enterprise share), Hispanic-owned firms received 8.7 percent (61.6 percent of the minority business enterprise share), and female-owned firms received a little more than 2.6 percent (18.4 percent of the minority business enterprise share) of the contracts or subcontracts awarded. 112/

111/ Metropolitan Dade County, Fla., Office of Transportation Administration, "Minority Business Enterprise Utilization Cumulative Recap up to the Quarter Ending September 30, 1980, p. 2 (Document on file with the U.S. Commission on Civil Rights).

112/ Metropolitan Dade County, Fla., Office of Transportation Administration, Detailed Minority Business Enterprise Contract Commitments OTA/MTA, Metro Dade County, Cumulative to Period ending March 31, 1981. (Document on file with the U.S Commission on Civil Rights, Table 3-page 2.

John Dyer, former transportation coordinator of Metro Dade County's Office of Transportation Administration (OTA), testified that the black business dollar commitments would be closer to 6 percent if "national" contracts for items that cannot be produced in Dade County, such as railroad cars, were not included in the contract commitment figures. Dade County has no authority or responsibility over minority business enterprise contracting on a national basis. 113/ Dr. Dyer contended that the actual construction phase of the rapid transit system, which began in 1980, would result in higher black business participation. 114/ Figures for the quarter ending March 31, 1981, however, showed little improvement in black business participation. 115/ From January 1, 1981, through March 31, 1981, OTA awarded $20,648,000 in contracts for the rapid transit system. Minority businesses won 20 percent of the contracts, for a total of $4,128,000. The actual minority business enterprise goal had been 15 percent. Yet subcontract commitments to black businesses totaled only

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113/ Dyer Testimony, Hearing Transcript, pp. 964-966.

114/ Ibid.

115/ Metropolitan Dade County, Fla., Office of Transportation Administration, Detailed Minority Business Enterprise Contract Commitments, OTA/MTA, From January 1, 1981 thru March 31, 1981. (Document on file with the U.S Commission on Civil Rights), Table 1.

$692,000, or 3 percent; Hispanic firms received $1,653,000, or 8 percent; and, female-owned firms received $1,783,000, or 9 percent. 116/ Of the minority business enterprise contracts, black-owned firms received 17 percent, Hispanic-owned firms 40 percent, and female-owned firms 43 percent. 117/

Because OTA had difficulty complying with UMTA's requirements for minority business enterprises, four conditional civil rights certifications were necessary. 118/ Harold B. Williams, UMTA's civil rights director, in a letter to UMTA's Acting Deputy Administrator, concluded that:

> [t]he period of time from the effective date of the [UMTA civil rights requirements], from March 1, 1978 to present, appears to be sufficient time to have carried out these assignments. The record shows that consistent delay and postponement have

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116/ Ibid. Beyond the $1,783,000 received by female-owned firms as part of the minority business enterprise goals, female-owned firms received an additional $271,000 as a goal separate from the overall minority business enterprise goal.

117/ Ibid.

118/ Lillian C. Liburdi, Acting Deputy Administrator, UMTA, letter to John Dyer, Oct. 24, 1979 (Exhibit ___, Hearing Transcript, p. __).

> occurred. While Miami's intent might be good, the action tends to be more promissory than real. 119/

In the fall of 1979, UMTA suspended new grant funds until OTA "substantially complied," late in December of that year. 120/ The Office of Transportation Administration finally received full civil rights certification on March 28, 1980, 2 years after UMTA's civil rights regulations had gone into effect. 121/

Since 1980, Miami (the Dade County Transportation Authority) has set aside for participation of black contractors the construction of a maintenance facility costing approximately $13 million. The Transportation Authority also is setting aside three other related contracts for black businesses. In contrast with these positive efforts, however, Miami is considering postponing construction of three rail

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119/ Harold B. Williams, memorandum to Lillian C. Liburdi, Oct. 29, 1979, p. 4 (Exhibit ____, Hearing Transcript, p.).

120/ Harold B. Williams, testimony, Hearing Transcript, p. 967.

121/ Barbara A. Ibarra, Regional Civil Rights Officer, letter to Dr. John A. Dyer, Mar. 28, 1980 (Exhibit __, Hearing Transcript, p. __).

stations in the predominantly black community. 122/ This last development calls into question the extent of the city's commitment to ending black exclusion from economic progress in Dade County.

122/ Barbara A. Ibarra, letter to Paul Alexander, Apr. 14, 1982.

CHAPTER V

EMPLOYMENT: PERSISTING PATTERNS OF DISCRIMINATION

Employment and equal employment opportunity are keys that can unlock the doors to equality for blacks in Miami. Although the Miami area recently has experienced another surge of economic growth, the black community has not been able to take full advantage of these newly created jobs. Both Miami's public sector and, to a much lesser extent, [illegible]'s private sector have recognized this and have taken steps to train and place black workers in jobs. Generally, however, these efforts have been unsuccessful.

Contemporary employment patterns in Miami are as much a product of historical and institutional discriminatory processes as they are a result of intentional acts of individual discrimination. Generations of explicit and pervasive race-based employment discrimination have left a legacy that continues to infect the labor market. Additionally, black job-seekers, few of whom are bilingual, also are finding it difficult to compete for jobs in the expanding retail and service market that caters to Miami's large Spanish-speaking clientele.

Allegations of employment discrimination compelled the City of Miami to adopt race-conscious affirmative measures, including goals and timetables, to dismantle the discriminatory process that had excluded black workers. Consequently, black employment has increased in the public sector. Nevertheless, these gains have not yet reached upper and managerial levels of the municipal workforce and have not occurred in the private sector.

Finding 5.1: As a result of past and present discriminatory practices, Dade County blacks have been effectively excluded from the private job market. Discrimination in the job market is so firmly entrenched that unemployment in the black community is not limited to periods of economic recession but remains unrelieved even during periods of rapid economic growth.

The employment picture clearly suggests the existence of racial discrimination in Dade County. 1/ Historically, both private and public employers have practiced intentional discrimination in Dade County and Miami, and the legacy of such

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1/ Discrimination is not merely the intentional and specific conduct of individuals or organizations acting in a vacuum. Discrimination is self-sustaining and interlocked with other societal processes. For instance, discriminatory housing patterns compound problems of educational discrimination, which in turn affect employment opportunities, and all the patterns have cumulative consequences that are reinforced over time. Actions and decisions by employers that appear neutral may, in fact, support inequality in this country.

One principle, affirmed by the Supreme Court, that underlies civil rights law forbidding employment discrimination is that:

> deficiencies in the education and background of minority citizens, resulting from forces beyond their control, not be allowed to work a cumulative and invidious burden on such citizens for the rest of their lives.

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 806 (1973). See, U.S., Commission on Civil Rights, Affirmative Action in the 1980's: Dismantling the Process of Discrimination (Nov. 1981), pp. 11-15.

practices persists. Less than 20 years ago the Florida State Advisory Committee to the United States Commission on Civil Rights found discrimination on the basis of race prevalent in Miami:

> Discrimination in private employment is widespread. Private employers persist in hiring Negroes as menial wage earners only. According to a survey of Miami...dated May 1962, three out of four Negroes are working as unskilled laborers and about 15 percent of these workers are employed at levels below their skills and training. 2/

Employment conditions for Dade County's black population are in a chronic state of crisis. Unemployment and underemployment were major factors contributing to the racial disturbances in 1980 as well as in the 1968 riots. Unemployment for blacks is significantly higher than for

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2/ Florida Advisory Committee to the U. S. Commission on Civil Rights, Report on Florida, (1963), pp. 39-40.

whites, 3/ but official unemployment figures often mask the true extent of unemployment in Dade County's black community. 4/ A 1979 study of conditions in Overtown, Miami's most economically depressed black area, found the

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3/ Unemployment rates in Dade County from 1973 to 1979 were:

	Black and Other	White
1973	7.5	3.4
1974	8.4	5.4
1975	16.6	9.8
1976	15.1	7.5
1977	15.7	8.5
1978	10.2	5.3
1979	9.3	4.9

Janet L. Norwood, Commissioner for Bureau of Labor Statistics, U.S. Department of Labor, letter to Paul Alexander, Acting General Counsel, U.S. Commission on Civil Rights, Apr. 21, 1981 (maintained in Commission files. It is noted that in these statistics the range of error is ± 1.2 percentage points for whites and ± 2.2 percentage points for blacks and other races. According to the Bureau of Labor Statistics, "[b]lacks and other races include all persons who identified themselves in the survey to be other than white. In the 1970 census, 89 percent of the black and other population groups were black; the remainder were primarily American Indians, Alaskan Natives, and Asians and Pacific Islanders. Hispanics are included among both the white and "black and other" groups. In the 1970 census, about 96 of the Hispanic population classified themselves as white." U.S., Department of Labor, Bureau of Labor Statistics, Geographic Profile of Employment and Unemployment, 1979 (1980) (hereafter cited as Geographic Profile of Employment and Unemployment, 1979), p. 69.

4/ The U.S. Department of Labor's definition of an unemployed person is one "who did not work during the survey week, made specific efforts to find a job in the prior 4 weeks, and [was] available for work during the survey week (except for temporary illness)." Geographic Profile of Employment and Unemployment, 1979, p. 69.

actual unemployment in depressed neighborhoods to be three times greater than the official rate:

> The unemployment rate for Culmer [aggregate name for three black inner-city neighborhoods] in 1975 was roughly 900 persons or 9% of the resident labor force. This figure hides rather than typifies the unemployment problem within this area. For example, 393 Overtown residents were unemployed and actively seeking work in 1975. An additional 1337 persons residing in Overtown, it is estimated, were "hardcore" unemployed: physically and age-wise eligible to work but not actively seeking employment. Combining the two unemployment categories one arrives at an alarming unemployment rate of roughly 30%. 5/

In 1980, unemployment in predominantly, black low-income areas was three times greater than in the rest of Dade County. 6/

5/ City of Miami Planning Department, Culmer Redevelopment Study--Overtown, Dorsey, Wheatley; Existing Conditions (May 1979) (hereafter cited as Existing Conditions--1979), p. 16.

6/ Metropolitan Dade County, Fla., Department of Human Resources, Profile of Social and Economic Conditions in Low-Income Areas in Dade County, Florida (1980) (hereafter cited as Profile of Social and Economic Conditions), p. 17.

As noted previously, contemporary employment conditions for blacks in Dade County developed during a period of marked economic growth for the county generally. Economic prosperity has not extended to the black community. In Dade County's low-income neighborhoods, where the majority of the county's black population resides, the unemployment rate is 24.4 percent for those with 1 to 8 years of schooling; 16.2 percent for those with 9 to 11 years; 13.8 percent for those with 12 years; 9.1 percent for those with 13-15 years; and 6.5 percent for those with more than 16 years. 7/ Fifty-five percent of the adults age 25 and over in Dade County's low-income areas did not complete high school. Approximately forty-four percent of those working had unskilled or service jobs. 8/

The educational system in Dade County has not provided black students with the necessary skills to compete successfully with whites. 9/ Industry representatives at the Commission's hearing testified that many young blacks graduated

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7/ Profile of Social and Economic Conditions, p. 18.

8/ Ibid., pp. 17-19.

9/ Miller Dawkins, testimony, Hearing before the U.S. Commission on Civil Rights, Miami, Fla., Dec. 8-11, 1980, unpublished transcript (hereafter cited as Hearing Transcript), pp. 98-100; See discussion of basic skill deficiencies in Chapter 2, Finding 2.3. Patricia Due, testimony, Hearing Transcript, pp. 129-31.

from high school unprepared to enter the job market. 10/ Economic exclusion is greater for black youth than for their elders, with teenage unemployment in low-income areas at 48 percent. 11/

For Miami's blacks, education alone cannot overcome the invidious effects of past employment discrimination. Hiring decisions based on seemingly neutral employment criteria may be discriminatory if they automatically exclude a large number of otherwise qualified individuals. For example, one major airline company required 2 years work experience and preferred high school graduates for entry positions as cleaners. 12/ These qualifications gave white applicants an obvious advantage since they were more likely to have finished high school and to have gained work experience in Miami. Similarly, a current requirement that applicants for welder, electrical plater, and industrial maintenance mechanic positions in the airlines

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10/ Richard W. McEwen, Chairman of the Board, Burdines Department Store, testimony, Hearing Transcript, pp. 629-30; Joseph O'Shields, Senior Vice-President, Southeast Banking Corporation, testimony, Hearing Transcript, p. 638-40.

11/ Profile of Social and Economic Conditions, p. 17.

12/ Personnel Office, Eastern Airlines, Miami, Fla., telephone interview, May 15, 1981.

industry have 4 years experience 13/ bars many blacks, who are unlikely to have had access to prior training and employment.

According to 1978 data, although blacks represented 15 percent of the available work force, nearly every major industry in Dade County's private business sector employed smaller proportion of blacks, particularly for professional and managerial positions. The transportation and public utilities industry, for example, employed blacks in only 10.9 percent of its 37,243 positions. 14/ A review of seven airline companies, among the largest employers in the area, disclosed that blacks constituted only 862, or 6.2 percent, of the companies' 13,869 employees.

A study of seven firms in electronics, a growing industry that employs the largest number of workers in manufacturing concerns in the Miami area, yielded similar results. Blacks held only 786, or 11 percent, of the 7,092 positions surveyed. 15/ Blacks constituted 14.6 percent of the 45,204

13/ Ibid.

14/ U.S., Equal Employment Opportunity Commission, 1978 Report: Minorities and Women in Private Industry (1980), vol. II, p. 168 (hereafter cited as EEOC, 1978 Report).

15/ U.S. Commission on Civil Rights, Staff Memo, Survey of Minority Representation in Selected Industries (1978), Review of Black Employment in the Private Sector of Dade County, Florida (Apr. 20, 1981), p. 4.

workers in the manufacturing industry as a whole. But nearly one-third of the black employees were laborers or service workers, as compared to 23.4 percent of Hispanic and 6 percent of white employees. Moreover, blacks comprised only 3.4 percent of officials and managers and only 3.3 percent of professionals in the manufacturing industry. 16/

Similarly, Miami's finance, insurance, and real estate industry employed 20,105 persons, of whom 63.4 percent were white, 25.9 percent were Hispanic, and 9.5 percent were black. Of the 3,400 officials and managers in this industry, only 74, or 2.2 percent, were black. Blacks comprised 3.8 percent of the 1,565 employees categorized as professionals, but they comprised approximately 90 percent of those classified as laborers or service workers. 17/ Employment statistics for 45 Dade County banks revealed that blacks held only 1,489, or 8.3 percent of 17,840 positions. 18/

The wholesale and retail trade industry employed 8,637 workers in 14.6 percent of its 59,000 positions. Although this

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16/ EEOC, 1978 Report, p. 166.

17/ Ibid., p. 171.

18/ U.S. Commission on Civil Rights, Staff Memo, Survey of Minority Representation in Selected Industries (1978), Review of Black Employment in the Private Sector of Dade County, Florida (Apr. 20, 1981), p. 6.

overall figure nearly equals the proportion of blacks in the available work force, 45.4 percent of the black employees were laborers or service workers. Only 409, or 4.7 percent, of the officials and managers in the trade industry were black. Of the 19,000 sales positions in the industry, blacks held only 1,768, or 9.3 percent.

The services industry 19/ differed from the other major industries in Dade County in that blacks constituted 18.9 percent of its more than 55,000 employees--higher than the proportion in the available work force as a whole. Within the industry's hierarchy, however, the status of blacks was comparable to that in other industries. Only 5.1 percent of the officials and managers were black, while 61 percent of the black employees were service workers, as compared with 42 percent of the Hispanic and 31 percent of the white employees. 20/

Even hotels and motels, which historically had provided a source of jobs for blacks, employed a disproportionately small

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19/ The services industry includes health, education, miscellaneous business services, hotels and lodging places, non-profit organizations, entertainment, legal, auto repair, professional and personal services.

20/ EEOC, 1978 Report, p. 172.

number of blacks. The 12 hotels and motels reviewed employed blacks in only 9.9 percent of the 4,283 positions. 21/

As these statistics indicate, blacks generally have had access only to low paying jobs with little prospect for advancement. Employed white males in Dade County are three and one-half times more likely to be working as professionals and technicians than employed black males and more than five times more likely to be managers and administrators. Of all working black males in Dade County, only 7.9 percent are in these two occupational categories. For all white working males, the percentage is 33.6. 22/

Employed black males are almost twice as likely to be working as equipment operators or as blue collar workers than are employed white males; 64.4 percent of all working black males and 36.1 percent of all working white males 23/ are employed in those two occupational categories.

21/ U.S. Commission on Civil Rights, Staff Memo, Survey of Minority Representation in Selected Industries (1978), Review of Black Employment in the Private Sector of Dade County, Florida (Apr. 20, 1981), p. 6.

22/ Metropolitan Dade County, Fla., Office of the County Manager, Profile of the Black Population (Spring, 1979), p. 27.

23/ Ibid.

Employed black women tend to be concentrated as either service or household workers. 24/ Employed white women are more than twice as likely to be working as professionals, technicians, administrators, or managers than employed black women. The following table clearly shows racial disparity within the various occupational categories in Dade County.

OCCUPATIONAL STATUS

	MALE		FEMALE	
	BLACK	WHITE	BLACK	WHITE
Professional & Technical	4.8%	17.1%	8.7%	16.9%
Managers & Adminstrators	3.1	16.5	1.0	5.5
Sales	2.0	11.9	2.5	5.6
Clerical	5.6	9.1	16.9	44.4
Operatives (including transportation)	23.3	9.0	10.0	5.3
Other Blue Collar	41.1	27.1	2.5	2.2
Farm Workers	2.6	0.7	2.6	0.4
Service Workers (except private household)	16.7	8.5	29.0	14.6
Private Household Workers	0.8	0.1	26.6	1.1

Source: Metropolitan Dade County, Fla., Office of the County Manager, Profile of the Black Population (Spring 1979), p. 27.

24/ Ibid.

Traditionally, trade unions systematically denied blacks access to training programs and excluded them from membership. In 1963, not one of the 1,000 persons in apprenticeship training programs in Dade County was black, and the Miami Sheetmetal Workers Local, like most other trade unions, was all white. 25/ Even when black workers developed gainful and marketable trade skills, they regularly were denied the opportunity to work or were restricted to work only in the black community. Under a "gentleman's agreement" with the white union, members of a separate black carpenters' union could not work on new construction jobs, large projects, or any construction that occurred in the white community. Blacks sometimes were "furloughed" in favor of white carpenters when the only work available was in black neighborhoods. 26/ The 1963 Florida Advisory Committee also found "a widespread denial of licenses by cities and counties to Negroes in the areas of electricity, plumbing and mechanics. In some cities, such as Miami...licenses are granted to practice electrical work, but not plumbing, with the tacit understanding that licensed Negro electricians will work primarily in Negro neighborhoods." 27/

25/ Ibid., pp. 23, 25.

26/ Ibid., pp. 25-26.

27/ Ibid., p. 40 (footnotes omitted).

There is a growing class of blacks in Dade County who remain entirely outside the economic framework and prosperity of the larger society. As the city of Miami reported in 1979:

> The severity of this [unemployment] problem surfaces when one realizes that "hardcore" unemployment is chronic, meaning that favorable cyclical swings in the local economy will have minimal impact upon reducing this segment of the total unemployed. The absence of marketable skills and racial discrimination within the local labor market have caused many potential workers to turn their backs to the labor market as a gesture of frustration, even when the economy is healthy and creating new job opportunities. 28/

Finding 5.2: The Miami and Dade County governments and the Federal agencies located in Miami employ a substantial number of black workers. Although a number of black employees in the public sector hold managerial positions, black employees are concentrated in lower level positions.

The City As Employer

The city of Miami is presently hiring and promoting its employees under the terms of two consent decrees that resulted

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28/ *Existing Conditions--1979*, p. 16.

from lawsuits alleging employment discrimination. The consent decree in the first lawsuit, Cohen v. City of Miami, 29/ was signed in 1973 to end discrimination in the Miami Police Department. Against this background of judicially determined discrimination against black employees in the police department, the Federal Government commenced an investigation into the employment practices of the city of Miami. According to the U.S. Department of Justice,

> [t]hat investigation revealed, among other things, a pattern of traditionally assigning blacks to lower paying, racially identifiable service and maintenance positions, the exclusion of Hispanics from all jobs in numbers disproportionate to their availability in the labor pool, the assignment of women to traditionally female positions and their exclusion from jobs traditionally held by men, and the use of unvalidated test and selection procedures. 30/

29/ Cohen v. City of Miami, No. 71-1887 CIV. (S.D. Fla. 1972). In this case, the district court found that the city of Miami had discriminated against blacks in the police department by using separate lines of progression for black and white officers until 1963 and barring blacks until 1960 from attending the police academy.

30/ Brief for the Unites States on Rehearing En Banc, at 7, United States v. City of Miami, 625 F.2d 1310 (5th Cir. 1980).

On the basis of this investigation, the Justice Department filed suit 31/ alleging the existence of a pattern and practice of employment discrimination throughout Miami's city government departments. A consent decree subsequently was signed enjoining the city from engaging in any act or practice that has the purpose or effect of discriminating on the basis of race, color, sex, or national origin against any employee, applicant or potential applicant for employment with the city. The decree establishes as a long term goal "the participation at all levels throughout...the city's work force of blacks, Latins and women approximating their respective proportions in the city labor force." 32/

As of December 1980, the city of Miami employed approximately 4,500 persons, of which 3,500 were in unsubsidized positions. Of the unsubsidized positions black employees held 33.6 percent. 33/ Although minorities and women are still underrepresented according to their numbers in

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31/ United States v. City of Miami, 614 F.2d 1322 (1980), *petition for rehearing en banc granted*, 625 F.2d 1310 (1980).

32/ United States v. City of Miami, 614 F.2d 1322, 1347 (5th Cir. 1980).

33/ Robert Krause, director, city of Miami Department of Human Resources, testimony, Hearing Transcript, pp. 595-97. An unsubsidized position is one supported totally by local funds rather than Federal funds.

the city of Miami's labor force, recent hirings and promotions tend to reflect the available labor market. 34/

City officials were willing to take affirmative steps to increase minority employment, and they cooperated in developing the United States v. City of Miami consent decree. 35/ The city commission adopted an ordinance establishing hiring goals for minorities and women in the police and fire departments that were higher than those required by the consent decree. 36/ Moreover, when it became apparent that civil service rules conflicted with the consent decree, the city adopted new civil service rules. 37/

Despite efforts to increase black participation in municipal employment, blacks generally remain confined to lower level positions. Opposition to change, particularly from the

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34/ Ibid., p. 596.

35/ Maurice Ferre, mayor, city of Miami, testimony, Hearing Transcript, pp. 1128-30.

36/ The consent decree established annual hiring goals of 56 percent for minorities and women "for each entry level position of police officer, public service aide, firefighter and traditionally white Anglo male positions in the Department of Finance and Building." United States v. City of Miami, 614 F.2d 1322, 1347 (1980). The ordinance established 80 percent as the hiring goal for minorities and women in the police and fire department. Krause Testimony, Hearing Transcript, p. 599.

37/ Krause Testimony, Hearing Transcript, p. 597.

police and fire department unions, has been continuous. 38/ As Robert Krause, director of Miami's Department of Human Resources, testified, the legacy of racial discrimination in Miami continues to exert considerable influence upon the employment pattern:

> If you look at the historic distribution of jobs in the city government, blacks have been assigned to the custodial maintenance types of jobs. Seventy-five percent of black employees are still employed in those kinds of jobs. We find that in the last year or so, however, we have been able to make significant progress. [W]e are beginning to break the stereotype but we still have a long way to go because we still have 80 percent of history behind us.... 39/

The city's work force, he noted, has not expanded. Almost all recent hires have been replacements for persons who have departed. It was estimated that from 1976 to 1980 the number of unsubsidized positions actually decreased by 800 positions

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38/ Ibid., pp. 597-98. See Brief for the United States of America on Rehearing En Banc, United States v. City of Miami, No. 77-1856 (5th Cir.), pp. 2-11.

39/ Krause Testimony, Hearing Transcript, pp. 601-02.

and, except in the police and fire departments, this shrinkage is expected to continue. 40/

The County as Employer

Dade County's Metro government is a larger employer than the city, providing some 16,800 full-time jobs. 41/ The county's work force is 31 percent black and 20 percent Hispanic, 42/ but as in the city government, black employees in the county government are concentrated in lower echelon positions. Blacks constitute approximately 60 percent of the county's paraprofessional staff and 59 percent of its service maintainance staff, but only 10.8 percent of the administrative staff. 43/

The employment pattern is unlikely to change significantly in the foreseeable future. The Metro government has been eliminating some nonuniformed positions due to budget

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40/ Ibid., p. 608.

41/ Wayne Rosenthal, director of employee relations, Metropolitan Dade County, testimony, Hearing Transcript, p. 603.

42/ Ibid.

43/ In additon to the categories mentioned above, blacks comprise 22.8 percent of the county's professional staff, 17.6 percent of its technicians, 11.8 percent of all employees in protective services, 29.5 percent of office clerical staff and 23.6 percent of the skilled craft staff. Metropolitan Dade County, EEO In-House Survey, (September, 1980) (maintained in Commission files).

cutbacks. 44/ Black employment gains in county government may solidify, but they are unlikely to develop much further. Indeed, many of the county's black employees were hired recently, and their low seniority makes them particularly vulnerable. Substantial cuts in the size of the county's work force could well erode the progress black employees have achieved.

The School System As Employer

The Dade County Public School System is the largest single employer in the county, providing jobs for more than 25,000 people. 45/ In 1977-78 although almost 28 percent of school department employees were black, they were concentrated in teaching positions in the elementary schools and were underrepresented in administrative positions. 46/ Seventy-eight percent of all administrative positions are held by white employees, who also predominated in the upper grades. Blacks held 13.7 percent of all administrative positions and 30 percent of all elementary classroom teaching positions. 47/

44/ Rosenthal Testimony, Hearing Transcript, p. 609.

45/ Miami, Fla., Dade County Public Schools, Status Report on Implementation of Affirmative Action (1977), p. 3.

46/ Ibid., pp. 3, 10, 16.

47/ Ibid.

The Federal Government As Employer

There are 92 Federal agencies in the Miami-Dade area, with a combined work force of approximately 12,500 persons. Federal employees make up 2.3 percent of the civilian labor force in Dade County. 48/ The size of the agencies varies from fewer than 50 employees to more than 4,300 employees. 49/ Although a few Federal Government agencies have been able to provide employment opportunities for blacks, glaring deficiencies remain in particular agencies.

A review of Office of Personnel Management data shows that while the Federal work force in Dade County increased by 0.3 percent, black representation was 17 percent in 1978, 18.7 percent in 1979, and 20.8 percent in 1980. 50/ These figures are somewhat skewed, however, because in 1980 the two largest Federal employers, the U.S. Postal Service and the VA Medical Center, employ a disproportionately large number of black workers. Some 28.3 percent of the Postal Services' 4,318

48/ Frederick B. Heath, Area Manager, U.S. Office of Personnel Management, letter to Paul Alexander, Apr. 5, 1982 (hereafter cited as Heath letter).

49/ Frederick B. Heath, Area Manager, U.S. Office of Personnel Management, prepared statement, Hearing Before the U.S. Commission on Civil Rights, Dec. 8-11, 1980, p. 1.

50/ Ibid. See also Heath letter.

employees are black, as are approximately one-third of the Medical Center's employees. 51/

There are relatively few black workers at the remaining Federal agencies, including Homestead Air Force Base, the U.S. Customs Service, the Federal Aviation Administration, the Drug Enforcement Administration, and the Internal Revenue Service. These agencies, each with more than 400 employees, are the largest Federal employers in the area after the Postal Service and the Medical Center, but none of them have a work force that includes blacks in representative percentages. For example, only 42 of the 819 (5.2 percent) employees of the Federal Aviation Administration are black. 52/

Office of Personnel Management (OPM) data also reveal that in all but one of the Federal agencies located in Dade County, the average salary grade for black employees is significantly below that for white male employees. 53/

51/ U.S., Office of Personnel Management, Miami Agencies--Minority Representation (undated) (maintained in Commission files).

52/ Ibid.

53/ U.S., Office of Personnel Management, CPDF: Minority Data--Miami, Florida By Agency As of 11/30/79 (maintained in Commission files).

In 1978, as part of the Civil Service Reform Act, 54/ Congress established the Federal Equal Employment Opportunity Recruitment Program (FEORP), 55/ requiring that plans be developed to recruit additional minorities and women where they are underrepresented in the Federal work force. 56/ The local area office of OPM conducted onsite reviews of the affirmative action plans of a number of Federal agencies in Miami. These audits disclosed that the agencies were not complying with the statutory FEORP requirements. Frederick Heath, OPM area office manager, testified that:

> OPM found generally that progress had been made in improving minority representation. However, the overall visits indicated to us a significant lack of progress in implementing FEORP plans, in the development of plans, and in the accomplishment of specific FEORP activities.... 57/

54/ Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111, (codified throughout Title 5 U.S.C. (Supp. III 1979)).

55/ 5 U.S.C. §7201 (Supp. III 1979).

56/ Id.

57/ Heath Testimony, Hearing Transcript, pp. 612-13.

Beyond recruiting additional minority and female employees, affirmative action plans may be used to channel such employees into jobs with higher pay and responsibility. Underemployment, or the exclusion from rewarding positions with the potential for career advancement, has been cited as perhaps an even more important problem than unemployment for black workers. 58/ In Dade County, as elsewhere in the country, black employees in the public and private sectors are invariably confined to the lowest paying jobs. The experience of the Metro government and the school system demonstrates that black administrators and managers are available, but that opportunities for advancement are limited.

Finding 5.3: Because many black youth lack basic entry level skills, they are effectively being excluded from the private job market. Young black job-seekers also face discrimination by employers who often have stereotypic perceptions of blacks.

Many new jobs are being created in the Miami area, but the labor supply available in the black community is not sufficiently skilled to meet the demand. Employers who testified before the Commission realized that racial tensions would not ease until the employment prospects for thousands in

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58/ Report of the National Advisory Commission on Civil Disorders (1968), pp. 124-26. This Commission is usually identified as the Kerner Commission, after its Chairman, former Illinois Governor Otto Kerner.

the black community were improved. Joseph B. O'Sheilds, senior vice-president of the Southeast Banking Corporation, testified:

> It's my perception [that] if we don't handle... [this] problem, and we can't address it, it is going to blow this community right out of the water. 59/

The textile, banking, and retailing industries are all rapidly growing industries that provide substantial numbers of jobs in the Miami area. The industries have many entry level jobs requiring basic skills and inservice training for employees. But representatives of each of these industries stated that, despite the distressingly high unemployment rate in Miami-Dade's black communities, they were having difficulty finding skilled applicants. 60/

Professionals in the manpower training field also believed that the lack of skills among black youth limited their opportunities. Dr. Judith Amster, acting director of the Youth Opportunities Center and director of the University of Miami drop-out project, testified:

59/ O'Shields Testimony, Hearing Transcript, p. 657.

60/ Alan Weinberg, Vice-President, Suave Shoe Corp., testimony, Hearing Transcript, pp. 626, 646-47; O'Shields Testimony, Hearing Transcript, pp. 633, 636-39; McEwen Testimony, Hearing Transcript, pp. 628-30.

> [The] skill levels [of black unemployed youth] are just so minimal that it precludes them from getting a job other than the barest entry level type of job which generally is not a long-term job and [precludes them] from staying on it or making any progress or headway in that job. So, if I had to...[identify the] one overriding factor [that acts as a barrier to employment] I would say their skills are too minimal to compete.... 61/

Dr. Amster also believed, however, that racial discrimination by employers played a large part in higher rates of black unemployment:

> I've grown up and lived down here since 1949....There [are] subtle, pervasive prejudicial kinds of things going on here. I think that an employer, given the choice between a white or Latin youngster and a black youngster with equal skills may tend

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61/ Judith Amster Testimony, Hearing Transcript, pp. 476-77.

> to opt for one of the first rather than the latter, and I think that's a reality we have to face. 62/

This Commission has noted that although "individual discriminatory conduct is often hidden and sometimes unintentional," 63/ it also can be the deliberate result of deeply ingrained social customs and beliefs. In 1963, for example, the Florida State Advisory Committee to the United States Commission on Civil Rights reported that no blacks were participating in apprenticeship training programs in Dade County. 64/ Training program directors justified black exclusion by saying that they were "not interested in hazardous work," and "they lack[ed] the technical understanding of electricity," or there were few blacks "willing to pioneer" and "persevere." 65/ Miami's history, however, refutes these images and perceptions of blacks. The railroads and many of

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62/ Ibid., p. 477.

63/ U.S., Commission on Civil Rights, Affirmative Action in the 1980's: Dismantling the Process of Discrimination (Nov. 1981), p. 10.

64/ Report on Florida, pp. 23-27.

65/ Ibid., p. 24.

the buildings and municipalities that comprise Dade County were built by black citizens. 66/

Richard W. McEwen, Chairman of the Board of Burdines Department Store, testified that his business had too many job applicants with no skills. The problem, Mr. McEwen felt. was almost exclusively confined to the black community:

> In general, the Anglo and Latin communities provide a quantity of employable workers. The black community is significantly deficient, and for these reasons we see materially inadequate communication skills, either written or verbal. We have inconsistent employment experience....[T]heir inability and lack of interest to comprehend and meet the codes for dress standards and personal hygiene, in particular, still is a factor for either insufficient work experience or no training....

66/ Metropolitan Dade County Office of the County Manager, *Profile of the Black Population*, (Spring 1979) pp. 42, 51; Judge Henderson, "Negro Labor in Miami," The Crises, March 1942, p. 95.

> In our business we reject between 50 and 60 percent of all black applicants just at the first interview. We give no test other than typists who apply for typing. It's because they can't get an application form and they can't complete a sentence at the work spot. It is a very difficult thing. 67/

Other knowledgeable observers who testified before the Commission took issue with Mr. McEwen's views. William Perry, president of the Greater Miami Branch of the National Association for the Advancement of Colored People, testified:

> ...I don't think that persons are being honest when they make those kinds of statements. It is like blaming the victim....I do not accept that it is up to the victim to correct his condition. 68/

The banking industry in Dade County, like the retail industry, has also had a growing number of jobs available and has found them difficult to fill. The industry forecasts even greater problems meeting its manpower needs in the future. 69/

67/ McEwen Testimony, Hearing Transcript, pp. 629-30, 643.

68/ William Perry, testimony, Hearing Transcript, pp. 1189-90.

69/ O'Shields Testimony, Hearing Transcript, p. 636.

Joseph B. O'Shields, senior vice president of the Southeast Banking Corporation, testified that the problem of an inadequately prepared labor force is endemic and not limited to black job applicants:

> I don't think it is accurate for me to say [that we perceive differences in skill levels based upon race and ethnicity among our employees]. We see deficiencies overall...and that is certainly not unique to any ethnic or racial group. 70/

He testified that racial differences in allegiance to the work ethic were sometimes "attributed" to black job applicants by employers who have their own "impressions" and "perceptions." 71/

The lack of skills is not the only difficulty faced by young blacks entering the private job market. The job market itself is having difficulty attracting qualified applicants from the black, white, or the Hispanic communities. The electronics industry, a large and growing industry in the Miami-Dade County area, has had so much difficulty locating technicians that it is recruiting from outside the Miami area.

70/ Ibid., p. 638.

71/ Ibid., pp. 639-40.

Daniel B. Bronson, vice president of industrial relations for Racal-Milgo Inc., a large electronics firm in Dade County, testified:

> We have had a great demand for electronic technicians over the past 2 years. As a matter of fact, we have hired close to 100 electronic technicians and...we had to go out of State, including military bases and 2-year tech schools around the United States to relocate people and pay them to come here, which is not easy in these times.... Now, I can assure you that my recruiting budget would much appreciate having a local base to hire electronic technicians. 72/

Among the litany of complaints that unemployed blacks did not possess the skills employers required, nowhere was there a sign of interest on the part of employers in providing the basic training needed by these unskilled youth. Stereotyping that holds black youth responsible for not possessing skills that have not been accessible to them is an indication of continuing institutional discrimination.

72/ Bronson Testimony, Hearing Transcript, p. 648.

Finding 5.4: The growing Hispanic community has created an expanding employment market from which non-Latin blacks are excluded because they are not bilingual.

The rapid growth of Miami's Hispanic population has had a profound effect on the region's employment patterns. The growth of the Hispanic-based economy has created many new jobs and the need for bilingual employees. 73/ Bilingualism is now very much a part of the business life of Miami's downtown retail industry, and is likely to become even more permanent and widespread in the future. 74/

Bilingual requirements for employment are an obvious barrier to monolingual job seekers. Since few blacks are bilingual, such requirements have been excluding them from a large and growing employment market. Bilingual requirements are becoming more commonplace in those limited areas such as service and retail positions connected with the tourist trade that, at one time, provided jobs for black workers. 75/

73/ Alfredo Duran, testimony, Hearing Transcript, pp. 544-45.

74/ Lester Freeman, executive vice president, Greater Miami Chamber of Commerce, testimony, Hearing Transcript, pp. 266, 268: Duran Testimony, Hearing Transcript, p. 546.

75/ Dr. Jan B. Luytjes, Professor, School of Business and Organizational Science, Florida International University, interview in Miami, Fla., Oct. 9, 1980.

In addition to posing an additional hurdle for black job applicants, bilingual requirements sometimes mask intentional racial discrimination. Rothel Fussel, acting supervisor of the State Employment Service (SES) office in Model Cities, testified that approximately two-thirds of all job orders received at SES were for bilingual employees. 76/ She testified that in many circumstances such bilingual requirements were pretexts for racial discrimination.

> Counsel: Let me ask you about bilingualism again, this issue that keeps coming up. If black students...were to learn how to speak and understand conversational Spanish, would they be able to get jobs?...
>
> Ms. Fussel: About 75 percent of them, yes.
>
> Counsel: Why do you say 75 percent?
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> Ms. Fussel: Well, sometimes the bilingual criteria...is placed there for reasons other than just Spanish and English. Sometimes it singles out unwanted applicants....For an example, if an employer that is a major

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76/ Rothel Fussel, testimony, Hearing Transcript, pp. 474-75.

> employer of Spanish-speaking employees places that restriction on an order... specifically to hire someone that speaks Spanish and, again, if a black person did speak Spanish they probably wouldn't get hired. 77/

Finding 5.5: The Comprehensive Employment and Training Act Program in Dade County has suffered from mismanagement and constantly changing program goals.

The Comprehensive Employment and Training Act (CETA) of 1973 78/ consolidated many of the Nation's employment and training activities under one administrative system. Although the act did not authorize new programs, it shifted a substantial degree of authority for planning, administering, and evaluating employment and training programs from the Federal government to State and local governments and allowed the program to be administered in a flexible manner in response to local needs. 79/

77/ Ibid., pp. 505-06.

78/ Comprehensive Employment and Training Act of 1973, Pub. L. No. 93-203, 87 Stat. 839, (codified as amended at 29 U.S.C.A. §§801-999 (1975 and Supp. 1980)).

79/ National Commission for Manpower Policy, CETA: An Analysis of the Issues, Special Report No. 23 (May 1978) (hereafter cited as CETA: An Analysis of the Issues), pp. 39-40.

Under CETA, prime sponsors, generally States or units of local government in areas with populations of 100,000 or more, are responsible for assessing local requirements and developing programs tailored to local needs. 80/ Federally financed services include classroom training, on-the-job training, work experience, public service employment, counseling, testing, job development, child care, and other supportive assistance. 81/ Sponsors may provide these services directly or by contracts or subgrants with other governmental or private groups. In either case, the sponsors must monitor and evaluate all programs. 82/

In Miami and Dade County, unemployment and underemployment are among the most severe and pressing problems of the black community. Unemployment rates, which do not reflect those persons who are not actively seeking employment, are consistently twice as high for blacks as for whites and Hispanics. For black male teenagers the picture is particularly bleak. 83/ An employment and training program that adequately prepared sufficient numbers of black workers

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80/ 29 U.S.C.A. §811 (Supp. 1980).

81/ Id., §846.

82/ Id., §§813, 846.

83/ Fussel Testimony, Hearing Transcript, p. 474; Angelo Rutherford, testimony, Hearing Transcript, p. 495.

and provided guaranteed career opportunities in the private sector is necessary, in order for blacks to be included in the economic and social mainstream in Dade County. Unfortunately, although the CETA program in Dade County in the past has provided employment opportunities for blacks in the public sector and currently is developing conduits to the private sector, the program has been inadequate.

Under the CETA program, the South Florida Employment and Training Consortium (SFETC) is the prime sponsor for the cities of Miami, Miami Beach, and Hialeah, as well as Dade and Monroe Counties. 84/ In 1980, the consortium had a budget of $49 million, most of which was distributed to over 100 contractors and subgrantees. 85/

Although the CETA program is 8 years old, it is still evolving because of the complex nature of the Federal, State, and local systems. Periodic legislative revisions and competing program goals also have hampered the program's development. There were substantial legislative changes increasing the program's responsibilities in 1974, 1976, 1977,

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84/ Charlotte Gallogly, executive director, South Florida Employment and Training Consortium, testimony, Hearing Transcript, p. 666.

85/ Ibid., pp. 666-67.

and 1978. 86/ Some of these changes, such as the Youth Employment and Demonstration Projects Act of 1977, 87/ required increased programs for specifically designated groups. Other changes reflected the interplay of varying economic conditions and competing policy debates over the program's objectives.

At different times and to varying degrees, the CETA program has responded to three different but related concerns: structural unemployment, countercyclical job creation, and income maintenance. 88/ Initially, the CETA program was enacted to assist the economically disadvantaged to find jobs. 89/ The program was aimed at those individuals who are generally unemployable (structurally unemployed). Such individuals might be from low-income families and some might

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86/ Pub. L. No. 93-567, 88 Stat. 1845 (Dec. 1974); Pub. L. No. 94-444, 90 Stat. 1476 (Oct. 1976); Pub. L. No. 95-40, 91 Stat. 203 (June 1977); Pub. L. No. 95-93, 91 Stat. 627 (Aug. 1977); Pub. L. No. 95-524, 92 Stat. 1909 (Oct. 1978). *See* S. REP. NO. 95-891, 95th Cong., 2d Sess. *reprinted in* [1978] U.S. CODE CONG. & AD. NEWS 4480-4581.

87/ Youth Employment and Demonstration Projects Act of 1977, Pub. L. No. 95-93, 91 Stat. 632, codified as amended at 29 U.S.C. §§893-898 (Supp. III 1979).

88/ *CETA: An Analysis of the Issues*, p. 9.

89/ *Employment and Training Report of the President* (1980) (hereafter cited as *1980 Employment and Training Report*), p. 146.

even enter the labor force during periods of high employment. But, for the most part, they are people who, because of discrimination, residency in depressed areas, or lack of skills and opportunity, remain outside of the labor market even when unemployment rates are low. 90/ They often are not included in official unemployment statistics because they either never entered the labor market or are considered discouraged workers. 91/

Shortly after the program's inception, when unemployment became a serious problem during the mid-1970s, CETA also began providing temporary jobs for those who were unemployed because of the recession. 92/ This kind of countercyclical program helps experienced or skilled workers who have lost jobs because of an economic downturn. Such individuals are not necessarily disadvantaged, and they are generally able to find jobs during periods of high unemployment. 93/

90/ CETA: An Analysis of the Issues, p. 66.

91/ Cf. Alan L. Sorkin, Education, Unemployment and Economic Growth (Lexington, Mass: D.C. Heath and Company, 1974), pp. 4-9; U.S. Department of Labor, Bureau of Labor Statistics, Geographical Profile of Employment and Unemployment, 1979 (1980), p. 69.

92/ 1980 Employment and Training Report, p. 147.

93/ CETA: An Analysis of the Issues, p. 66.

Because most of those eligible for CETA participation have low incomes and receive other governmental assistance, 94/ CETA has an important income maintenance role. To the extent that the program targets individuals for participation, economic needs outweigh considerations of employability and the overall state of the economy. 95/

Two other factors that have characterized the development of the CETA program are delays in devising and implementing administrative controls and a shifting dependence from the public to the private sector as the source of training and jobs. 96/ Dade County has experienced all the problems that have plagued the CETA program nationally. Boyd Hanke, the United States Department of Labor liaison with the South Florida Employment and Training Consortium (SFETC), testified about some of the mismanagement problems the CETA program experienced in South Florida:

94/ Ibid., p. 79.

95/ CETA: An Analysis of the Issues, p. 66. "For example, given the choice between serving an unemployed teenager and an adult family head, although the former might be less employable, the latter might be given preference because of greater income needs." Ibid.

96/ 1980 Employment and Training Report, p. 147.

Counsel. What were the problems experienced by the consortium in 1978?

Mr. Hanke. ...The basic problems were...a lack of a client tracking system, a lack of management system, and a lack of a fiscal control process. Those were the three basic problems. Inherent in those are ancillary problems that provided a general mismanagement of the entire program as well as a lack of attention being paid by the chief elected officials of the program at that time.

Counsel. How does the consortium presently stand in relationship to other prime sponsors?

Mr. Hanke. ...In 1978 the prime sponsorship [for Dade County, the SFETC] received a three rating, which was the worst rating that could be given; the three rating indicated that serious problems existed in the prime sponsorship which would not be corrected in time for the next fiscal year.

> For 1979 and 1980 that three rating was changed to a number one rating, which indicates that the prime sponsor is eligible for immediate funding at the beginning of the next fiscal year, so in a period of roughly 8 to 9 months the program management was reconstructed.... 97/

In addition to mismanagement, the CETA program in Dade County also fell victim to the confusion that accompanied policy changes at the national level. In 1974, for example, Congress added Title VI to CETA which authorized a broad one-year countercyclical Public Service Employment (PSE) program. 98/ In 1976, Congress redesigned the act to address problems resulting from the earlier expansion, such as the fact that many individuals who were not disadvantaged were eligible for participation not only in Title VI PSE programs, but also in the original Title II PSE programs. There also was evidence that local governments were substituting CETA positions for regular municipal job slots, a practice that created few new jobs. In addition, an insufficient number of CETA participants

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97/ Boyd Hanke, testimony, Hearing Transcript, pp. 684-86.

98/ Emergency Jobs and Unemployment Assistance Act of 1974, Pub. L. No. 93-567, 88 Stat. 1845 (Dec. 1974) (codified as amended at 29 U.S.C.A. §§841-859 (Supp. 1980)).

were moving into permanent positions in the nonsubsidized labor market. 99/

Consequently, the Emergency Jobs Program Extension Act of 1976 tightened eligibility requirements for CETA participation. 100/ Those requirements, however, applied not to the original Title II positions, which were intended to aid the disadvantaged, but only to newly created positions under Title VI, thus converting it from a countercyclical to a counterstructural program. 101/ When CETA was reauthorized in 1978, the counterstructural purpose of CETA in general, and the PSE program in particular, was reemphasized. 102/ At the same time, a significant attempt was made to redirect the entire CETA program more toward the private sector. Title VII of the

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99/ Frank L. Pierson, The Minimum Level of Unemployment and Public Policy (Kalamazoo, Mich.: W.E. Upjohn Institute for Employment Research, 1980) (hereafter cited as Unemployment and Public Policy), p. 139.

100/ Emergency Jobs Program Extension Act of 1976, Pub. L. No. 94-444, 90 Stat. 1482 (Oct. 1976).

101/ Pierson, Unemployment and Public Policy, p. 139. Countercyclical programs are targeted at those with an employment history whose unemployment results from periodic downturns in the economy. Counterstructural programs are designed to provide training and employment for those who generally remain unemployed even during periods of low unemployment.

102/ Comprehensive Employment and Training Act of 1978, Pub. L. No. 95-524, 92 Stat. 1909 (Oct. 1978). See, Employment and Training Report, p. 149.

Comprehensive Employment and Training Act of 1978 established the private sector initiative program, 103/ which led to the establishment of private industry councils such as the one operating in South Florida. 104/

As a result of the constant restructuring of the CETA program, CETA lost public credibility and acceptance. In addition, the involvement of the private sector as a source for jobs and training occurred just as the program focused on serving those with the least skill and work experience. There was also no evaluation of the relative success of different types of specific training and employment programs with different types of client populations.

Michael Griffey, executive director of the Private Industry Council in Dade County, testified that CETA training and placement programs have difficulty getting private businesses to cooperate because the program has a bad image:

> Counsel. Do you believe the perception is true that private employers have traditionally been reluctant to participate in CETA-sponsored programs?

103/ 29 U.S.C.A. §§981-986 (Supp. 1980). See, Employment and Training Report, p. 146.

104/ Michael Griffey, executive director, Private Industry Council of Dade County, Inc., testimony, Hearing Transcript, pp. 677-88.

> Mr. Griffey. In a general sense, yes....I think those people who have had no interaction with the system basically have a generally negative approach because...of the very adverse publicity about the CETA system locally. 105/

Lanny Sumter, director of the Alternative Youth Employment Strategies Program (AYES) which provides training for juvenile offenders, agreed:

> I think a lot of bad opinion for CETA has come out of what I consider an overkill when a small number of programs are found to be abusive of our regulations...I think the reputation has been tarnished a great deal as a result of it. 106/

Robert Krause, director of the city of Miami Department of Human Resources, testified that changes in the program made the city's management and personnel decisions more difficult. 107/ He said that legislative changes sometimes forced people out

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105/ Griffey Testimony, Hearing Transcript, pp. 683, 687.

106/ Lanny Sumter, testimony, Hearing Transcript, p. 494.

107/ Robert Krause, testimony, Hearing Transcript, p. 607; Robert Krause, interview in Miami, Fla., Oct. 17, 1980 (hereinafter cited as Krause Interview).

of the labor market before they had developed sufficient skills and resources to successfully enter the private market. 108/ He also reported that previous participants who were essentially ready for jobs had to be terminated because of the tightened eligibility requirements, while the newer CETA participants had fewer employment skills and needed more assistance than could be provided under the revised program guidelines. Consequently, they were not desirable as municipal employees even though their compensation was subsidized. 109/

At one time, Miami's CETA program subsidized approximately 25 percent of city employees. 110/ That number has decreased dramatically, and public sector jobs shortly will become a negligible component of the program. 111/ Although 25 percent of the terminated city CETA workers were employed full-time by the city, only a few who held PSE jobs with the city have been able to get jobs in the private sector. 112/

108/ Krause Interview.

109/ Ibid.

110/ Charlotte Gallogly, executive director, South Florida Employment and Training Consortium, testimony, Hearing Transcript, p. 688; Krause Testimony, Hearing Transcript, p. 595.

111/ See U.S., Commission on Civil Rights, Civil Rights: A National Not a Special Interest (1981), pp. 94-99.

112/ Krause Testimony, Hearing Transcript, p. 606.

Despite the city's effort to assist CETA workers, it has had little success, according to Robert Krause.

> Efforts [to place terminated city CETA workers in other types of employment] are continuously made. We have a staff that we created 1-1/2 or 2 years ago for the sole purpose of providing counseling and outplacement services to CETA employees who were terminated. It is a very well trained staff. It is a very competent staff. It is a very dedicated staff and it is very unsuccessful. 113/

Since many of those unable to transfer to private sector jobs were among the more highly skilled CETA participants, the prospect of eventually transferring the more disadvantaged CETA participants to the private sector is particularly dismal. Many of the newer PSE CETA participants fail even to complete the 18-month program. 114/

113/ Ibid., p. 607. The county, however, reportedly is able to place 80 percent of its terminated CETA employees who are not hired by the county in either private employment or educational programs. Wayne Rosenthal, director, Employee Relations, Dade County, testimony, Hearing Transcript, p. 606.

114/ Robert Krause Interview, Miami, Fla., Oct. 17, 1980.

Because of the changes in program emphasis, entrants were often not ready for jobs.

> [T]he majority of people that are coming to our intake process do not have the basic education to perform the jobs. We've tested them, every single one of them, and we are finding that 25 percent of the youth that come through our program are preprimers; that means they can't read at the second grade level...[and]...the overwhelming majority of our clients tested out at the fourth and fifth grade reading level, lower for the math level. 115/

Charlotte Gallogly explained that the tightened eligibility restrictions meant the program could not be used to prevent workers who lost jobs as a result of the riots from becoming permanently unemployed. 116/

Limited skills are not the only problem many new CETA participants present. Employers often are willing to train new hires if they are otherwise ready for jobs. 117/ People who

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115/ Gallogly Testimony, Hearing Transcript, p. 668.

116/ Ibid., pp. 671-72.

117/ Ibid., p. 697.

exist outside the job market, however, particularly youth, often have unrealistic expectations about career advancement and lack the work habits employers desire. Angelo Rutherford, director of the Black Youth Leadership League, discussed this problem in testimony before the Commission:

> Many disadvantaged black youth, even if they find a job, most likely will not keep it because their work habits, like their education, has not been geared to the labor market. 118/

Encouraging private businesses to become more involved with an unpopular employment program when the participants' skills are decreasing is difficult. Private employers are often less willing to hire unskilled and unprepared workers than are public employers. 119/

At the same time that job opportunities for CETA workers are diminishing, shifting program goals and functions have decreased the number of clients CETA can assist. Providing job training, counseling, and placement services to bring people

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118/ Rutherford Testimony, Hearing Transcript, p. 495; See also, Sumter Testimony, Hearing Transcript, pp. 488-89; Judith Amster, director, CETA Youth Opportunities Center, testimony, Hearing Transcript, pp. 478-79.

119/ Krause Interview.

into the labor market is not cheap, easy, or a short-term undertaking. 120/

In an attempt to meet private sector standards without exhausting CETA resources, the Dade County program has begun requiring its youth program entrants to work towards a high school equivalency degree. 121/ One purpose of the requirement is to demonstrate each youth's commitment to meeting business needs and standards. The requirement also identifies those applicants most likely to succeed, while screening out most of the large proportion of disadvantaged youth who are not prepared to enter the labor force and for whom the CETA program was originally intended.

In April 1981, a private, nonprofit corporation, the Private Industry Council (PIC), began operations in Dade County. 122/ Twenty-two of PIC's 30 board members represent various businesses, including most major Dade County industrial categories, while the remaining members represent community organizations, labor, and schools. 123/ PIC's chief functions are to advise SFETC and the schools about the private sector's

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120/ Gallogly Testimony, Hearing Transcript, p. 689.

121/ Ibid. p. 698.

122/ Griffey Testimony, Hearing Transcript, p. 677.

123/ Ibid.

manpower needs, to be a broker between the private sector and the public institutions, and to be a program operator to develop private sector training. 124/

The policy of the Dade County PIC is to train CETA participants for guaranteed employment in particular industries according to standards the industries themselves establish. Currently, PIC is offering two types of programs, both of which incorporate this policy. In one program, after private employers have identified their needs, PIC screens CETA clients and refers them to the employer. 125/ CETA clients who are hired receive on-the-job training for which CETA reimburses the employer.

In the second program, PIC designs a training program in conjunction with a particular industry, such as a consortium of hospitals or banks. PIC then selects CETA clients for the specialized training, which the private industry provides. CETA pays the participants during training, which consists of both classroom instruction and on-the-job training, and the employer hires those who successfully complete the program. 126/ Under a similar new program called CETA

124/ Ibid.

125/ Ibid., p. 678.

126/ Griffey Testimony, Hearing Transcript, p. 679.

Partners, community organizations will operate programs that guarantee employment following industry-prescribed training. 127/ This kind of subsidized, hands-on training that guarantees jobs to CETA participants, while meeting employers' needs, is an improvement over other programs. 128/ Such programs, however, can accommodate relatively few eligible CETA workers. During the first 9 months of its operation, for example, the PIC program placed 115 people, although more than 70 firms were involved. 129/ A specialized respiratory therapy and training program, which was co-sponsored by four hospitals, had only 10 CETA participants. 130/ In a review of the CETA program conducted after the March 1980 riots, the Department of Labor (DOL) identified the private sector initiative program in

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127/ Gallogly Testimony, Hearing Transcript, pp. 670-71.

128/ CETA participants in other programs are often trained for positions that are either not available or offer only limited prospects for any future career advancement. Jane Robinson, Project Director, Youth Employment Services Program, James E. Scott Community Association, testimony, Hearing Transcript, pp. 674-75.

129/ Griffey Testimony, Hearing Transcript, p. 678.

130/ Ibid., p. 679.

Dade County as "the major problem" SFETC faced. DOL authorized intensive technical assistance to help resolve the problem. 131/

There also appears to be little systematic, longitudinal research analyzing the relative effectiveness of the various different types of training and employment programs for different client populations. On both the national and local levels, it is difficult for program administrators to develop effective programs for the various unemployed groups, each with somewhat different problems and needs. 132/ Workers who temporarily are unemployed because of cyclical economic downturns are much easier to train or place in jobs than are the hardcore unemployed. Unemployed youth, single women with children, and adult males fare differently under identical training and employment programs. There is very little research, however, examining the relative effectiveness of various programs for each of these groups. The CETA program's changing structure and fluctuating client population have made methodological surveys difficult.

131/ Memorandum from Ernest G. Green, Assistant Secretary for Employment and Training, to Frank N. Jones, Chairman Intergovernmental Task Force, June 6, 1980 (maintained in Commission files).

132/ See, CETA: An Analysis of the Issues, pp. 65-68.

The need for more research about the CETA program's effectiveness is nationally recognized. 133/ One of the studies underway is the Department of Labor's Continuous Longitudinal Manpower Study 134/ to estimate the net impact of CETA on participant earnings. In 1980, DOL conducted a preliminary analysis of information from the survey and found positive effects of CETA participation on earnings. The department emphasized that the findings were tentative and that data limitations and unresolved methodological questions continued to hamper the study. 135/

The absence of quantified survey results makes it difficult for prime sponsors to make policy decisions, which at the local level frequently are based solely on "informal, first-hand, personal experience," 136/ according to the Department of Labor. The executive director of SFETC testified that the lack of research hurt the CETA program in South Florida.

133/ Employment Training Report of the President (1979) (hereafter cited as 1979 Employm[illegible] and Training Report), p. 212.

134/ 1980 Employment and Training Report, p. 171.

135/ 1980 Employment and Training Report, p. 172.

136/ Ibid., p. 159.

> I think one of the major weaknesses of the CETA program in terms of changes that are really necessary is that evaluation is not something that is a nicety but something that is a necessity, and we don't do that. We don't do longitudinal research studies....That's just something that always falls by the wayside when Federal funds are cut. 137/

In addition to administrative problems, limited funds have hampered the CETA program both nationally and in Dade County. In 1980, Congress reduced the SFETC's funding by 42 percent as compared to the prior fiscal year, leaving a budget of $49 million. After the riots, Congress allocated an additional $10.3 million, specifically earmarked for use in areas affected by the riots. 138/ Of this allocation, SFETC received only $3.1 million in fiscal year 1981, and there are currently no prospects of receiving the remainder. 139/ This amount was insufficient to resolve the unemployment problems. In fiscal

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137/ Gallogly Testimony, Hearing Transcript, pp. 704-05.

138/ Gallogly Testimony, Hearing Transcript, p. 670.

139/ Joseph Alfano, Executive Director, South Florida Employment and Training Consortium, letter to Paul Alexander, Apr. 9, 1982 (hereafter cited as Alfano letter).

year 1982 Congress again reduced the SFETC budget by another 63 percent to $19.1 million, and further reductions or the possible elimination of the program are projected for fiscal year 1983. 140/

> VICE CHAIR BERRY. ...You will have another $10.3 million to spend over the next 4 years. Does that mean that the unemployment problems in the areas where the riots took place are likely to be resolved in such a way that we won't have people complaining about--
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> MS. GALLOGLY. The answer is absolutely no. $10.3 million will train 3,000 people. 141/

Another funding problem results from the inaccurate unemployment statistics DOL uses in its formulae for determining allocations to prime sponsors. 142/ Since these statistics do not include discouraged workers or those who

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140/ Ibid.

141/ Ibid., p. 691.

142/ Ibid., p. 668; *Cf*., 29 U.S.C.A. §§855, 864 (Supp. 1980).

never have entered the job market, 143/ unemployment rates for Dade County appear relatively low and mask the widespread unemployment of blacks and recent Cuban refugees. 144/ The SFETC estimates that if DOL included the newly arrived, job-seeking refugees, the local incidence of unemployment for January 1982 would have been 11.3 percent, instead of the 6.9 percent reported. 145/

The third funding problem is that CETA workers' wages are limited to such a degree 146/ that many eligible people will not enter the program. This is one reason the majority of CETA clients in Miami, as elsewhere, are women. 147/ Charlotte Gallogly testified that because of wage restrictions, male workers cannot be recruited into the program, 148/ and women

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143/ Cf., Alan L. Sorkin, Education, Unemployment and Economic Growth (Lexington, Mass: D.C. Heath and Company, 1974), pp. 4-9; U.S. Department of Labor, Bureau of Labor Statistics, Geographical Profile of Employment and Unemployment, 1979 (1980), p. 69.

144/ Miami, Fla., South Florida Employment and Training Consortium, Labor Market Information Report, No. 8 (July 8, 1980), p. 2.

145/ Alfano letter.

146/ See, 29 C.F.R. §§93.1, 93.2, 95.35 (1981).

147/ Gallogly Testimony, Hearing Transcript, pp. 705-06.

148/ Ibid.

with children find they cannot remain in CETA jobs because the wages are inadequate to provide child care service. Indeed, salaries for CETA graduates with children are lower than the amounts available under the various public assistance programs. 149/

Finding 5.6: The Small Business Administration's Division of Civil Rights Compliance, the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP), and the Equal Employment Opportunity Commission (EEOC) are responsible for enforcing Federal laws prohibiting employment discrimination. A number of factors, however, undermine enforcement efforts.

Finding 5.7: Limited resources and inadequate coordination among the Federal agencies have weakened enforcement of Federal laws prohibiting employment discrimination.

Finding 5.8: The Equal Employment Opportunity Commission and the Office of Federal Contract Compliance have set enforcement priorities that are unsuitable to the labor market structure in South Florida.

Finding 5.9: The Equal Employment Opportunity Commission guidelines on bilingual employment requirements are inappropriate in South Florida.

Finding 5.10: The Equal Employment Opportunity Commission and Office of Federal Contract Compliance Programs rules and regulations that are designed to protect minorities from employment discrimination but that do not distinguish between black and Hispanic employees and job applicants are inappropriate in South Florida.

The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing Title VII of the Civil Rights Act of 1964, which forbids discrimination in employment. 150/ In

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149/ Ibid., p. 705.

150/ 42 U.S.C. §§2000e to 2000e-17 (1976 and Supp. III 1979).

Miami, the local EEOC area office received 1,657 complaints in fiscal year 1980, 151/ of which approximately 1,000 were allegations that employers discriminated against black employees on the basis of their race. 152/

The EEOC, in addition to investigating and remedying individual acts of discrimination, has a systemic unit that seeks remedies to large-scale practices of employment discrimination. Theodore Bukowski, Deputy Director of EEOC's Miami District Office, outlined the scope of the systemic unit's activities:

> Generally, the employers selected for systemic action are those employers who have been identified with patterns of employment discrimination that are most serious, and where the maintenance of a successful systemic case will have a significant positive impact on the employment opportunity available to minorities and women....

151/ Frank Costales, District Director, Equal Employment Opportunity Commission, testimony, Hearing Transcript, p. 711.

152/ Ibid. The Miami area office has jurisdiction not only over Dade County but also...the figures for Dade County are not available. Ibid.

> Generally, these are employers with low utilization of minorities and women...[and] ...[e]mployers...who maintain specific recruitment, hiring, job assignment, promotion, and discharge policies which have an adverse impact on minorities and women. 153/

Internal guidelines, however, limit the range of activities the Miami District Office Systemic Unit might undertake. EEOC guidelines require the systemic unit to restrict itself to cases against establishments employing between 500 and 2,500 persons. 154/ The purpose of the upper limit was to prevent systemic unit actions against larger employers until the unit had gained experience and the lower limit was designed to maximize the benefits from the unit's efforts. 155/ Most businesses in Miami, however, are smaller than those subject to systemic review: only 84 of the 38,706 establishments operating in Dade County in 1978 had more than 500 employees. 156/ The EEOC criteria, expanded to cover

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153/ Theodore Bukowski, testimony, Hearing Transcript, p. 716.

154/ Theodore Bukowski, interview in Miami, Fla., Nov. 6, 1980.

155/ Ibid.

156/ U.S. Department of Commerce, Bureau of the Census, County Business Patterns -- Florida (1978), Table 2, p. 45.

employers with numerous branch offices, seemed to preclude any systemic action against the banking industry, the garment and apparel industry and most other manufacturing and service-oriented employers. 157/ Since 1978, the Miami District Office has investigated and forwarded about 12 cases to the EEOC Commissioners for their review. 158/ None of these cases involved a Dade County employer. 159/

While the systemic unit handles cases that have a broad impact, the bulk of EEOC's work involves processing thousands of individual complaints. Responsibility for processing those complaints lies with the area office's factfinding unit. Although the rapid charge processing procedure established in 1979 eased the caseload, the factfinding unit is inadequately staffed for its workload. For 1980, the goal of each equal opportunity specialists (EOS) in the unit was to complete 80 cases. 160/ After extraordinary administrative and staff effort to reduce backlog, the equal opportunity specialists completed an average of 93 cases each. 161/ Consequently, the

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157/ Bukowski Interview, Nov. 6, 1980.

158/ Bukowski Testimony, Hearing Transcript, p. 717.

159/ Ibid., p. 718.

160/ Bukowski Interview, Nov. 6, 1980.

161/ Ibid.

goal for each EOS was raised to 93 cases a year without an increase in staff size. Area office administrators are concerned that the staff is overworked already, and that motivation and morale will degenerate rapidly. 162/

The Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor is responsible for ensuring that Federal contractors abide by Executive Order No. 11246, which requires that they not discriminate against employees or applicants because of race, color, religion, sex, or national origin. 163/ Under this Executive Order, Federal contractors also are supposed to take affirmative action measures. In addition, OFCCP is responsible for enforcing Federal statutes prohibiting discrimination against the handicapped and veterans.

The Miami OFCCP Area Office has enforcement responsibility for seven counties in South Florida, including Dade County. 164/ The eight-state region has between 5000 and 6000

162/ Ibid.

163/ Exec. Order No. 11246, 3 C.F.R. 339 (1964-65 Compilation), reprinted as amended in 42 U.S.C. §2000e at 1232 (1976) and 42 U.S.C. §2000e at 392 (Supp. III 1979).

164/ Bennett Stalvey, OFCCP Area Director, testimony, Hearing Transcript, p. 712.

Federal contractors, about 800 of whom are listed in the Miami office area. 165/

OFCCP exercises its enforcement power either in response to a complaint or by conducting a compliance review. 166/ Preaward reviews are sometimes conducted on supply or service contractors, generally those with 250 or more employees. 167/

Industries are selected for compliance reviews according to priorities established by the OFCCP central administration in Washington, which listed the coal, oil, and steel industries for review in South Florida. These industries are practically nonexistent in the Miami area. 168/ In 1981, the area office convinced the Washington office to replace the food industry and the paper products industry on the list with the banking and electronics industries. 169/ In Dade County, the banking and electronics industries together comprise between 60 and 70

165/ Bennett O. Stalvey, Jr., letter to Paul Alexander, Mar. 30, 1982 (hereafter cited as Stalvey letter).

166/ Ibid., p. 712.

167/ Bennett Stalvey, interview in Miami, Fla., Nov. 12, 1980.

168/ Stalvey Testimony, Hearing Transcript, pp. 718-19.

169/ Ibid., pp. 742-43.

percent of all Federal Government contractors in the Miami area. 170/

The Small Business Administration, through its Division of Civil Rights Compliance, is responsible for ensuring that those who received financial assistance from the agency do not engage in discrimination. 171/ SBA's primary enforcement activity is to review reports of voluntary compliance by loan recipients. 172/ SBA District Offices are responsible for periodically identifying all loan recipients to the Regional Civil Rights Compliance Office. 173/ That office then requests the recipients to disclose their employment practices, specifically identifying the racial composition of work forces by job category. 174/

Relying on the district offices to forward lists of loan recipients frequently delays the Compliance Office's review, because the office may not learn that a loan was extended until

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170/ Stalvey Interview, Nov. 12, 1980.

171/ 42 U.S.C. §§2000d-4 (1976 and Supp. III). Title VI of the Civil Rights Act of 1964 embodies the strong national policy of prohibiting Federal funds from being used to encourage, foster or in any way support racial discrimination.

172/ James Ellis, Civil Rights Director, Southeastern Region, Small Business Administration, testimony, Hearing Transcript, p. 719.

173/ James Ellis, telephone interview, Nov. 5, 1980.

174/ Ibid.

4 to 6 months after the fact. 175/ Moreover, only 40 percent of loan recipients generally come to the attention of the Compliance Office. 176/ The only loan recipients identified for compliance reviews were those employing 20 or more persons in 1979 and those employing 15 or more persons in 1980. 177/

Consequently, the Compliance Office never reviews many loan recipients, some receiving substantial amounts of financial assistance through SBA, to see if they are in violation of antidiscrimination laws. The Commission identified 40 Dade County businesses that received over $100,000 each in SBA loans between 1975 and 1979, but the SBA Civil Rights Compliance Office was aware of only 11. 178/ Because EEOC and OFCCP do not share information with the SBA, either EEOC or OFCCP could find that an SBA loan recipient has violated Federal laws prohibiting employment discrimination without SBA ever being aware of the violation. 179/

175/ Ibid.

176/ Ibid.

177/ Ellis Testimony, Hearing Transcript, p. 714.

178/ Ibid., p. 722.

179/ Ibid., pp. 721-22.

Miami's tri-ethnic population also creates enforcement problems that generally do not occur in other areas. Bilingual requirements often preclude many black job seekers from employment, 180/ but whether such requirements are permissible under Federal employment law has not been determined. EEOC has issued guidelines concerning language requirements on the job, 181/ but these guidelines address rules that require bilingual employees to speak only English. The problem in Miami is that many employers require a bilingual labor force. One reason advanced for the EEOC's failure to address the permissible scope of bilingual requirements may have been that the guidelines were developed without advice from the field offices. 182/

Title VII of the Civil Rights Act prohibits employment practices that have a discriminatory effect, regardless of their intent, 183/ unless they are a "business necessity." 184/

180/ See discussion of preference for bilingual employees in Finding 2.4 of Chapter II.

181/ 29 C.F.R. §§1606.1-1606.8 (1981).

182/ Bukowski Interview, Nov. 6, 1980.

183/ Griggs v. Duke Power Co., 401 U.S. 424 (1971).

184/ *Id.*, at 431.

Bennett Stalvey, explained that the bilingual requirement issue has come up in OFCCP's compliance reviews but has not been satisfactorily resolved in any enforcement action. 185/ The employer, Mr. Stalvey testified, would have to demonstrate that a bilingual requirement is a bona fide occupational qualification, and he was not aware of any employer ever having made such a showing. 186/ Mr. Stalvey pointed out that, even if a bilingual requirement were determined a business necessity, it would have to be applied equally, without regard to race and would be limited only to specific job slots. An employer could not apply the bilingual requirement across-the-board to all positions. 187/

The large Hispanic presence in Miami may dilute affirmative action requirements for blacks. For instance, although OFCCP regulations call for hiring and promotional goals for minorities and females, 188/ the goals for the construction industry do not differentiate between minority groups. 189/ In

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185/ Stalvey Testimony, Hearing Transcript, pp. 728-31.

186/ Ibid., pp. 729-30.

187/ Ibid.

188/ 41 C.F.R. §§60-1.4, 60-1.40 (1981).

189/ Separate goals for each covered minority group are allowed for service and supply contractors (all other industries). Stalvey letter, Mar. 30, 1982.

Dade County, therefore, if a contraction contractor's work force were entirely Hispanic, it would meet affirmative action requirements. 190/ Although the OFCCP area office may attempt to persuade such an employer to recruit and hire black workers, it cannot require him to do so. The local OFCCP area office has been aware of this problem for a number of years and has sought administrative guidance from the Regional OFCCP office to help resolve it, but to no avail. 191/ On neither the regional nor the national level has OFCCP articulated a policy to ensure that the Executive order protects those it was intended to protect, even in an area such as Miami, where there is a large non-black minority population.

190/ Stalvey Interview, Nov. 12, 1980.

191/ Ibid.

CHAPTER VI

JUVENILE JUSTICE: THE FAILURE OF THE SYSTEM

The juvenile justice system has been a long-standing problem in Dade County. In 1961, the county's grand jury issued a report, declaring that the "continued growth of juvenile delinquency in Dade County and throughout the country has created a sense of immediacy." In 1962, a subsequent grand jury reported that the "total situation in Dade County in regard to the juvenile problem is a monumental one requiring greater effort and concern than has previously been shown." The 1979 Dade County grand jury cited these statements in its own report, declaring, "we are dismayed at the persistence of these problems and how ineffectively they have been dealt with by many of the agencies and institutions responsible for their resolution." 1/ Unfortunately, recognition of the problem has not been the key to the cure.

The proportion of black youth is more than three times as great in the juvenile justice system as in the Dade County population. According to court records, blacks commit more than half of the serious juvenile crime in Dade County. Yet,

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1/ State of Florida, Eleventh Judicial Circuit, Dade County Grand Jury Report (May 13, 1980), pp. 1-2 (hereafter cited as Grand Jury Report).

rehabilitative agencies systematically exclude all juveniles with long records of delinquency, thereby routinely denying much-needed services to black youth.

A report published by the Juvenile Court in 1977 notes that:

> The programs that do exist in the black neighborhoods and in the general community lack sufficient facilities, equipment, staff and space to adequately respond to the needs. This situation prevails generally in the total community but is more pronounced, where the need is greatest, among neighborhood programs that cater to black delinquents. 2/

Finding 6.1: Although the Florida juvenile code stresses punishment befitting the seriousness of an offense, the Dade County juvenile justice system has not deterred juvenile crime effectively.

In 1978, amendments to the Florida juvenile code shifted the emphasis of the juvenile justice system from "training and treatment directed toward the correction and rehabilitation" 3/ of juvenile offenders to "sanctions which are consistent with

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2/ Seymour Gelber, A Profile of Dade County Juvenile Crime (October 1977), p. 7.

3/ Fla. Stat. Ann. §39.001 (1976).

the seriousness of the offense. 4/ Judge William Gladstone, administrative judge of the Dade County court's family division, suggested the legislature's probable rationale for amending the statute:

> I know there is a growing concern about delinquency, primarily violent delinquency, and although there really is in at least the State of Florida an actual lessening of juvenile delinquency, the community does not perceive it that way. There was a general hysteria primarily occasioned by that very, small percentage of kids who commit crimes, whose crimes are violent in nature....[T]he thrust of that act was to have serious consequences reaped upon children for their crimes. 5/

The amended juvenile code changed the disposition of juvenile cases in several ways. For instance, probation was replaced by "community control," which is defined statutorily as follows:

4/ Id., §39.001(2)(a) (1979).

5/ Judge William Gladstone, testimony, Hearing Transcript, pp. 371-72.

> [The] legal status of probation created by law and court order in cases involving a child who has been found to have committed a delinquent act. Community control is an individualized program where the freedom of the child is limited and the child is restricted to noninstitutional quarters or restricted to the child's home in lieu of commitment to the custody of the department in a training school, halfway house, or other residential program.... 6/

The community control concept was intended as a significant departure from the old probation system. Extended periods of "supervision" without time limits or specific objectives were to be replaced with time-based, goal oriented plans whose sanctions are consistent with the seriousness of the offense. The new system requires the swift application of sanctions and the prompt detection of potential problems. 7/

6/ Fla. Stat. Ann. §39.01(10) (1979).

7/ Max B. Rothman, District XI Administrator, State of Florida Department of Health and Rehabilitative Services, letter to Paul Alexander, Apr. 12, 1982 (hereafter cited as Rothman letter).

Judge Gladstone testified that the change in terminology probably resulted from the legislature's frustration over the law's inability to control juvenile crime:

> [The] responsibility for delinquent children [was placed] back into the community which produced the delinquent child. Florida has an executive-branch run juvenile justice system in which the State Department of Health and Rehabilitative Services is primarily responsible, not the court, for the management of kids found to be delinquent. The legislature in Tallahassee, it seems to me, threw up their hands and said, "look, communities, you are producing these delinquent children. You will now develop control over these children" and indeed they changed the word "probation" to the words "community control" and said that "you will devise methodologies within your community to control delinquent behavior, and you will have children held responsible to their community and the communities responsible to the child." 8/

8/ Gladstone Testimony, Hearing Transcript, pp. 372-73.

Under the amended system establishing community control, offenders are supervised for shorter periods, which gives counselors smaller caseloads, averaging approximately 35 cases per counselor. 9/ The legislature deemed shorter supervision periods appropriate because the statute provides specific and intensive sanctions. 10/

The State Attorney's Office (SAO), which has responsibility for determining whether or not to prosecute an alleged juvenile offender, 11/ has the discretion to "file a motion [waiver] requesting the [juvenile] court to transfer the child for criminal prosecution if the child was 14 or more years of age at the alleged time of commission of the violation of law for which he is charged." 12/ The SAO does not have discretion for certain offenses and, therefore, must file a waiver with the juvenile court in such cases:

> If the child has been previously adjudicated delinquent for a violent crime against a person, to wit: Murder, sexual battery, armed or strong-armed robbery, aggravated

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9/ Grand Jury Report, p. 33.

10/ Ibid.

11/ Fla. Stat. Ann. §39.04(2)(e) (1979).

12/ Id., §39.09(2)(a).

> battery, or aggravated assault, and is currently charged with a second or subsequent such offense, the state attorney shall file a motion requesting the court to transfer the child for criminal prosecution.... 13/

The 1978 amendments also permit the SAO to "direct file" an information with the adult criminal court to transfer prosecutorial jurisdiction over the offender from juvenile court to the adult court. Now the SAO may, "[w]ith respect to any child who at the time of commission of the alleged offense was 16 or 17 years of age, file an information when in his judgment and discretion the public interest requires that adult sanctions be considered or imposed." 14/

Since the 1978 amendments were enacted, the rate of juvenile crime did not drop significantly through 1980, although according to the State Attorney the number of juvenile arrests decreased substantially in 1981. 15/ The number of

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13/ Id.

14/ Id., §39.04(2)(e)4.

15/ Reno letter, Appendix B, p. 1. The Florida Department of Health and Rehabilitative Services (HRS) records reflect a 3% decline in juvenile arrests from 1978 to 1980. Rothman letter, p. 3.

juveniles being waived or direct filed to criminal court has increased dramatically. 16/ According to Shay Bilchik, chief of the juvenile division of the State Attorney's office, adult courts handled approximately 30 juveniles in 1977. By 1980, the figure had risen to approximately 500. 17/ This increase appears directly related to the fact that although they are not committing more offenses, juveniles now are committing more violent offenses. According to Mr. Bilchik:

> There has been an increase in the use of weapons, both hand guns and knives, in the commission of crimes by juveniles; whereas it used to be the most common offense was a purse snatch or a chain snatch [stealing gold necklaces from women by pulling them off their necks], we see more indications that the juveniles are bringing a knife with them, taking a gun in their side pocket rather than just going in there with the intention of a strong-armed robbery. 18/

16/ The Florida Statutes were amended in 1981 to broaden the power of the State Attorney to file direct felony informations (Section 39.04) and to detain juveniles (Section 39.032). See Reno letter, Appendix B, p. 2.

17/ Interview in Miami, Fla. Nov. 12, 1980.

18/ Shay Bilchik, testimony, Hearing Transcript, p. 385.

One function of the Florida Department of Health and Rehabilitative Services (HRS) is to provide social service support to the juvenile justice system. 19/ This support includes interviewing juveniles charged with delinquent acts, providing detention facilities, helping the attorneys and the court decide whether to prosecute, making recommendations for case disposition, and providing counseling services. 20/ After arrest or informal referral by the police, alleged juvenile offenders are sent to HRS. 21/ According to HRS statistics for January through June of 1980, HRS received referrals for a total of 5,520 juveniles charged with delinquent offenses in the district encompassing Dade and Monroe counties. Of this number, 61.7 percent were white, and 36.6 percent were black. The following chart illustrates the types of offenses committed and groups the alleged offenders by race:

19/ Fla. Stat. Ann. §959.011(1) (1974).

20/ *Id.*, §959.011(2), (8) (1974); §39.04 (1980).

21/ Fla. Stat. Ann. §39.04 (1980).

Race	Felony-Persons	Felony-Property	Felony-Victimless	Misdemeanor-Persons	Misdemeanor-Property
White	179	859	110	69	558
Black	353	730	55	75	399
Other	13	24	2	2	25

Race	Misdemeanor-Victimless	Contempt	Violation of Local Ordinance	Traffic Offense	Reopened Cases
White	530	1	203	890	8
Black	242	0	21	138	8
Other	18	0	1	7	0

Source: Florida Department of Health and Rehabilitative Services (October 1980).

Using the same cases shown above, the following chart shows the actions taken by the State Attorney's Office:

Race	No Petition Filed *	Petition Filed	Information Filed	Waiver Filed	Indictment Filed
White	1988	1269	19	53	0
Black	881	951	42	110	8
Other	57	28	4	4	0

*The SAO has the discretion to determine whether to file with the juvenile court a petition alleging the child has committed an offense for which he or she should be adjudicated delinquent. If the SAO determines there is no need to prosecute an alleged offender, no petition is filed. If the SAO determines that the offense is severe enough to warrant "direct filing" the case with the adult criminal court rather than prosecuting the offender in juvenile court, an information is filed. A waiver is a petition by the SAO requesting the juvenile court to relinquish jurisdiction over the offender because the nature of the offense and the child's past record indicate that the adult criminal court is a more appropriate forum. If the SAO determines that the case is sufficient to seek an indictment from the county grand jury, an indictment is filed.

Source: Florida Department of Health and Rehabilitative Services (October 1980).

* * * * *

On May 13, 1980, a Dade County grand jury filed a report evaluating the juvenile and criminal justice systems. 22/ Twenty-three prior grand jury reports had addressed similar issues, but none of their recommendations had relieved the growing community concern about deterring crime and solving the problems inherent in the criminal justice system.

One of the 1979 grand jury's recommendations was that the juvenile and criminal justice systems be aligned more closely because "today's juvenile delinquent [is] generally destined to become tomorrow's adult criminal." 23/ Although the grand jury based its report on the randomly selected files of only 200 juvenile offenders and 275 adult criminals, 24/ the report clearly indicates the Dade County juvenile justice system's failure to deter juvenile crime.

Of the juveniles arrested, three-quarters were aged 14 through 17, with 17-year-olds representing 17 percent of this figure. 25/ Eighty-five percent of the juvenile offenders were

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22/ Grand Jury Report.

23/ Ibid., p. 48.

24/ Ibid., p. 22.

25/ Ibid., p. 23.

male, 26/ and although blacks comprise an estimated 15 percent of the Miami-Dade County population, 27/ half of the juvenile offenders in the grand jury's sample were black. 28/ The study revealed that blacks enter the system at an earlier age and are more likely to have their cases referred for judicial action. Blacks comprised 65 percent of the juveniles referred for court action and 65 percent of those committed to State training schools. 29/

The majority of juvenile cases are handled nonjudicially, precluding the children's appearance before the juvenile court. Nonjudicial dispositions are most common where offenders have minor records or have committed minor offenses that may not warrant court action. Generally, the HRS intake counselors, who are responsible for processing alleged offenders once they enter the juvenile justice system, simply confer with the juveniles and their families, warn them about the consequences of further delinquent acts, and then dismiss

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26/ Ibid., p. 24.

27/ Office of the County Manager, Profile of the Black Population (Spring 1979), p. 8.

28/ Grand Jury Report, p. 24.

29/ Ibid., p. 25.

the cases. 30/ In its study, the grand jury found that most offenders in the 70 cases handled nonjudicially were not rearrested. 31/

The grand jury concluded, however, that the juvenile justice system does not adequately identify likely recidivists. As the study pointed out:

> Our data...clearly indicates that... approximately twenty percent of first-time juvenile offenders will become repeat offenders, including violent repeat offenders, who will follow their initial NJA [nonjudicial action] with repeat arrests, commitments to state school and, ultimately an adult criminal record and the inevitable cycle of prison and parole. 32/

The grand jury linked this inability to predict recidivism and provide appropriate intervention with HRS's failure to provide adequate and effective social services to juveniles at

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30/ But see, Rothman letter, noting that positive changes in intake procedure have taken place in the last two years.

31/ Ibid., pp. 30-31.

32/ Ibid., p. 31.

critical ages. The grand jury looked at 52 offenders committed to State school, 23 of whom were recommitted for subsequent offenses, waived into criminal court, or both. 33/ The majority were unemployed, black, male substance-abusers with little education. 34/ Of the 23 who were recommitted or waived into criminal court, 19 were arrested for the first time before their fifteenth birthdays. 35/ Of those 19, 18 were between the ages of 10 and 14 at the time of their first arrests. 36/ Moreover, "13 had...been arrested again within one year of that first arrest and in 11 of the thirteen cases had again had those second arrests handled NJA [non-judicial action] without supervision or services." 37/ The grand jury noted that "[t]he cases of those juveniles aged 10 through 14 who have had their second referral to HRS Intake within one year of the first referral should be carefully screened and appropriate review and supervision should be made available." 38/ Clearly,

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33/ Ibid., p. 32.

34/ Ibid., pp. 23-27.

35/ Ibid., p. 32.

36/ Ibid.

37/ Ibid.

38/ Ibid.

these statistics indicate that HRS is not intervening effectively with younger offenders to deter recidivism.

Finding 6.2. The Florida Department of Health and Rehabilitative Services, which provides social services support to the juvenile justice system, has been ineffective in meeting the rehabilitative needs of its juvenile clients.

Once a juvenile is arrested, a Florida Department of Health and Rehabilitative Services (HRS) intake counselor schedules a conference with the juvenile and his or her family. 39/ Local monitoring in District XI (Dade County) during fiscal year 1980-81 revealed a conference rate of 42-50% of the applicable cases. 40/ The district undertook new procedures to improve the conference rate, including changes in the methods of notifying clients and their parents of conference appointments and required home visits by the counselor prior to the recommendation to the state attorney when appointments were not kept. HRS reports that by the end of the fiscal year the conference rate had improved to 89%, and was 88% in January 1982. 41/

Within 20 days of an arrest or complaint, the intake counselor recommends either taking nonjudicial action or filing

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39/ Florida Department of Health and Rehabilitative Services, Dependency and Delinquency Intake Manual (Sept. 1, 1980), pp. 5-14.

40/ Rothman letter, p. 2.

41/ Ibid.

a delinquency petition with the juvenile court. 42/ The Assistant State Attorney decides whether to follow the recommendation, considering such factors as the seriousness of the offense, the juvenile's age, past record, family environment, and the possibility of rehabilitation. 43/ From the date of the arrest or complaint, the SAO must file a petition within 45 days, 44/ and the trial must be held within 90 days. 45/

If the court finds a juvenile to be delinquent, the intake counselor recommends either commitment to the State's custody 46/ or community control. 47/ Commitment places an offender in a local, State, or out-of-State program, depending on the needs of the child and the availability of space. 48/ Community control consists of community-based sanctions, which may include monetary restitution, community-service work,

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42/ Fla. Stat. Ann. §39.04(2)(d) (1979).

43/ Bilchik Testimony, Hearing Transcript, p. 383.

44/ Fla. Stat. Ann. §39.05(6) (1979).

45/ *Id.*, §39.05(7)(b).

46/ *Id.*, §39.11(1)(c).

47/ *Id.*, §39.11(1)(a).

48/ Bill Shapiro, interview in Miami, Fla., Nov. 7, 1980 (hereafter cited as Shapiro Interview).

curfew, counseling, and substance-abuse programs. 49/ The judge makes a final disposition based on recommendations by HRS and the attorneys handling the case.

Under the Florida juvenile justice system, HRS is the single most important State entity responsible for the care and rehabilitation of delinquent youths. HRS participation in juvenile cases potentially could influence whether a juvenile offender was "rehabilitated" or became a habitual offender. That any significant rehabilitation occurs is questionable.

A profile of the juveniles who commit crimes reveals their need for social services. In July 1980, Judge Seymour Gelber, a juvenile judge for the 11th circuit (Dade County), released a study profiling juvenile crime in Dade County. 50/ His study was based on 495 adjudicated delinquents during the period of September 1979 through April 1980. Because these juveniles were charged with offenses requiring court action, Judge Gelber termed them "'serious' delinquents--those that have caused real concern in the community and are most in need of assistance from outside the family." 51/

49/ Fla. Stat. Ann. §39.111(6)(e) (1979).

50/ Seymour Gelber, A Profile of Dade County Juvenile Crime (July 1980) (hereafter cited as Juvenile Crime).

51/ Ibid., p. 2.

The following chart, from Judge Gelber's study, illustrates juvenile crime by types of delinquent offense and by race. These figures show that blacks committed half of the serious juvenile crimes, 90 percent of the robberies, and 68 percent of assaultive crimes. 52/

TABLE II

(By Percentage—495 Adjudicated Delinquents)

TYPES OF CRIME COMMITTED BY TOTAL POPULATION AND PROPORTION OF EACH CRIME BY RACIAL/ETHNIC CATEGORY

TYPE CRIME	TOTAL POPULATION	BLACK	ANGLO	LATIN
BURGLARY-HOME	23%)	54%	34%	12%
	))41%)			
BURGLARY-BUILDINGS	18%)	57%	25%	18%
ASSAULT AND BATTERY	14%	54%	27%	19%
ROBBERY	8%	90%	7%	2%
LARCENY	13%	46%	30%	24%
MOTOR VEHICLE	12%	36%	23%	41%
DRUGS	6.5%	27%	42%	30%
MISCELLANEOUS	5.5%	39%	39%	21%

Source: Seymour Gelber, "A Profile of Dade County Juvenile Crime" (July 1980).

52/ Ibid., p. 9.

Although 14-year-olds committed 19 percent of the burglaries, three-fourths of "all serious juvenile crime [was] committed by the 15, 16 and 17 year age group. The 16 and 17 year-olds together [perpetrated] 56 percent of all juvenile crime, almost half of all burglaries; 63 percent of all robberies, and 57 percent of all other assaultive crime." 53/ Blacks under 13 years of age committed two-thirds of all crime in that age category, while 12-year-olds--who committed a smaller percentage of crime--committed burglaries more than half the time. 54/

The recidivism rate was very high. Of the population Judge Gelber studied, 60 percent committed another offense within 3-months of a prior offense. 55/ Once this 3-month period passed, however, the rate of re-arrest apparently decreased. Judge Gelber suggested that the slow pace of the criminal justice system might have prompted early recidivism. 56/

Like adult crime, juvenile crime does not occur in a vacuum. Psychological and socioeconomic forces may precipitate

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53/ Ibid., p. 13.

54/ Ibid., p. 14.

55/ Ibid., p. 15.

56/ Ibid., p. 16.

criminal behavior in some individuals. Deterring juvenile crime can be critical to controlling adult crime.

Eighty-three percent of the black youth Judge Gelber studied came from one-parent households, and 94 percent of those under age 12 lived in households headed by mothers. 57/ At fifty-two percent, the overall delinquency rate for blacks was almost identical to that of black offenders from single-parent homes (fifty-four percent). 58/ Judge Gelber suggested that "[d]elinquency seems to attach itself to children coming out of a broken family, headed by a female, particularly in a Black family." 59/ In Miami, about one-third of black families are headed by a single parent, as compared to one-seventh among Hispanic and non-Hispanic white families. 60/

Economics also play a significant role in the rate of juvenile delinquency. Although the 1978 U.S. Census showed that 11.6 percent of families in the United States live below the poverty level, 61/ 54 percent of all the juveniles and

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57/ Ibid., p. 23.

58/ Ibid., p. 25.

59/ Ibid.

60/ Profile of the Black Population, p. 30.

61/ Juvenile Crime, p. 26.

65 percent of the black juveniles in Judge Gelber's study came from poverty level homes. 62/

There are many possible explanations for the disproportionate number of blacks in the juvenile justice system. Former HRS counselor Vashti Armbrister testified about why black youths may be delinquent, ascribing their crimes to "frustrations, alienations, anger, hostility, restlessness." Armbrister said that after the recent disturbances, she spoke with young blacks who told her there was "no one who really cared about them" or their problems. She said that they didn't want temporary jobs or handouts; they "want homes that are not infested with rats and roaches." 63/

As a social service provider, HRS addresses juvenile offenders' primary needs because poverty is so prevalent in their backgrounds. Judge Gladstone pointed this out in his testimony before the Commission:

> The trick, of course, is to get into their [juveniles'] lives with proper parental nurturing, communities that are not violent, communities and families that have hope at the moment of birth. 64/

62/ *Id*. p. 26.

63/ Vashti Armbrister, testimony, Hearing Transcript, pp. 434-35.

64/ Gladstone Testimony, Hearing Transcript, p. 375.

HRS rehabilitative programs have been criticized for "systematically excluding all juvenile hard-cores... particularly those [juveniles] of an assaultive nature. This policy results in hard-cores, of whom the blacks are in greatest number, virtually not being admitted." 65/

Most HRS rehabilitative programs are designed for juveniles who have been adjudicated delinquent and committed to State custody. State-wide, there are approximately 1,150 commitment slots; Dade County has 135-145 slots. 66/ In fiscal year 1978, there were 781 commitments from the HRS district that encompasses Dade and Monroe Counties. As the criteria for placement, HRS placement coordinator Bill Shapiro uses "the age, the present offense, recent and past juvenile history, home and family environment, attitudes, educational achievement or lack of educational achievement." 67/

The HRS intake counselor provides information about the offender with respect to the placement criteria as a basis for determining the "right" commitment slot. 68/ Frequently, space

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65/ Juvenile Crime, p. 21.

66/ Bill Shapiro, Placement Coordinator, Florida Department of Health and Rehabilitative Services, testimony, Hearing Transcript, p. 442.

67/ Ibid., p. 440.

68/ Shapiro Interview in Miami, Fla., Nov. 7, 1980.

is not available in the "right" slots, so juveniles may be placed in other programs that may not meet their needs. 69/

For fiscal year 1980, the Florida legislature allocated $5,160,960 for HRS youth services in Dade County. 70/ Despite funding problems that stretch the resources thinly, HRS has tried to maintain the same racial and ethnic composition in its programs as that of the general juvenile delinquent population (black--52 percent, white--28 percent, Latin--20 percent). 71/

The low educational and experiential requirements for HRS counselors affect the quality of the counseling HRS provides. 72/ Without the necessary training and experience, counselors may not be able to intervene quickly and effectively or to assess behavioral problems manifested as delinquent acts. Juvenile delinquency may reflect low educational achievement and disruptive behavior in school, but

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69/ Ibid.

70/ Gary Thompson, HRS Fiscal Officer, telephone interview, Feb. 25, 1982.

71/ Juvenile Crime, pp. 21-22.

72/ A youth counselor is required to hold a B.A. degree and have two years of work experience in a family or children counseling agency. See Florida Department of Administration Class Code 6928, Job Specification for HRS District Intake Counselor (1975).

counselors cannot evaluate such symptoms out of context. HRS counselors require well-developed skills to assess the underlying causes, such as disruptive home life, learning disorders, or peer pressures, for such behavior.

Children who have been adjudicated delinquent but do not require commitment or are released from State custody often are placed in community control status. Under community control, an HRS field services counselor usually monitors the juvenile in the somewhat perfunctory way as would a probation officer. The counselor sees the child an average of once per week, checks on school attendance and progress, and attempts to counsel the youth. Juveniles may be denied certain privileges, given curfews, or ordered to enroll in special programs, such as drug rehabilitation.

Despite the apparent need for this type of supervision, several factors may dilute its effectiveness. The length of time a juvenile remains on community control is relatively short. 73/ Counselors may have inadequate skills for helping children modify their behavior, or caseloads may be too heavy. And counselors cannot alter socioeconomic factors that spur some children to delinquency.

73/ Maria Puig, Unit Counselor, Community Control, Florida Department of Health and Rehabilitative Services, Interview in Miami, Fla., Nov. 5, 1980.

One community control program that appears to be relatively successful is restitution. Juveniles who commit property-related offenses (burglary, robbery, strong-armed robbery, auto theft, petty theft, and vandalism) usually are ordered to make financial restitution or to perform community services as compensation for their crimes. For the period July 1979 to September 1980, the restitution program recorded 1,047 cases with a total of 29,806 community service hours and $19,652.75 in financial restitution. 74/

Despite the apparent success of the restitution program, this type of punishment may have unforeseen consequences. According to Judge Gladstone:

> [W]e are taking children...the children who are most recidivistic, the children who are so-called hard-core delinquents, and we are taking them largely out of communities in which there is no work, there is no hope.... [We ask them]..."what do you want?" The first thing they will say...is, "I want work" or "I want a job" and...the first work they ever get...[we present as] punishment rather than something constructive. 75/

74/ Ibid.

75/ Gladstone Testimony, Hearing Transcript, pp. 373-74.

In some cases, the offender's background limits the rehabilitative aspects of the restitution program. Gerri Mitchell, an HRS restitution counselor, finds it very difficult to locate employment for juveniles who have no employment skills, little education, and unrealistic expectations of their employment potential:

> [I]f you get a kid who...has taken a car and...does $1,500 worth of damage to that car...[b]ut the family is on welfare, I can't see ordering him to pay $1,500.... [I]f we get a kid...[who] is 15 years old, he doesn't have a social security card... which [will take] maybe 6 weeks...[to get]....[T]hen you...try [to] get [him or her] a job, if the kid doesn't read and doesn't have the proper education, we can't get him a job....[If you can get him or her a job, it will be in]...Burger King [or] McDonald's....He doesn't want that type of job. He wants to be an electrician, but he...dropped [out of school]...in the ninth grade....[And] he doesn't want...a bum job because...[it] doesn't make any money....

> [H]e wants a job where he can make plenty of money.... 76/

According to HRS, it requested and received state funding for a statewide program to divert children from the judicial system. 77/ The Juvenile Alternative Services Program (JASP) includes restitution and community service, mediation and arbitration, subsidized work restitution, volunteer and family counseling. It was tested in three districts for fiscal years 1979 to 80 and 1980 to 81 and resulted in increased diversion of children from the courts, detention and commitment facilities. 78/ In District XI (Dade County) it is expected to be operational by May 1, 1982, under contract with the Dade County Criminal Justice Council. 79/

Delinquency is often a product of poor education, unemployment, ghetto neighborhoods, and disruptive home lives. The offenders, once released from State custody or care, must return to the very environments that contributed to their delinquency. Community expectations are high for the juvenile

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76/ Gerri Mitchell, Restitution Counselor, Florida Department of Health and Rehabilitative Services, testimony, Hearing Transcript, pp. 454-55.

77/ Rothman letter, p. 2.

78/ Ibid.

79/ Ibid.

justice system, but Judge Gladstone believes that the system will fail unless the community expectations for the juveniles, themselves, are changed.

> Don't give me a child 15 years of age who has been abused or abusive for those 15 years who has never known a moment's success...who is not likely ever to know a moment's success and expect me in a matter of 6 months or something, somehow, to make an acceptable good productive happy citizen out of him. We are pretty much at the end of the line, so I don't think the successes in a juvenile justice system really can come out of that justice system. The fault doesn't lie with the system; it lies with the community that produced the kids that come into the system. 80/

For the juvenile justice system to be most effective, it should have a lasting effect on youthful offenders. Wherever possible, the underlying causes of juvenile crime should be identified and met with meaningful intervention. Failing that, sanctions may control delinquent behavior.

80/ Gladstone Testimony, Hearing Transcript, p. 375.

Finding 6.3: The combined inability of the Public Defender and the Florida Department of Health and Rehabilitative Services to meet the legal and nonlegal needs of juvenile clients prevents the black juvenile offender from being adequately served by the juvenile justice system.

The Florida Public Defender (P.D.) is statutorily authorized to represent all indigent criminals, including juveniles who face possible adjudication of delinquency. 81/ The Public Defender has an annual budget of $4,695,422, with approximately $600,000 allocated to the juvenile division. The juvenile division has a staff of 12 attorneys, with an average caseload per attorney of 528 cases annually. 82/

Until June of 1981, the Dade County juvenile court operated a central system that permitted multiple arraignments of alleged offenders at informal hearings, known as "soundings." Juvenile arraignments must occur relatively soon after arrest as juveniles facing an adjudication have the right to a speedy trial. 83/ Attorneys for both the State Attorney's Office (SAO) and the Public Defender usually rotated these preliminary hearings on a weekly basis. The juvenile's first contact with a Public Defender usually occurs at the arraignment. Although

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81/ Fla. Stat. Ann. §27.51 (1) (1980).

82/ Mark Weinstein, Business Manager, Dade County Public Defender's Office, Telephone Interview, Feb. 25, 1982.

83/ Fla. R. Juv. P. Rule 8.180 (1980).

the central system was a time-saving mechanism, it could operate to the disadvantage of the juvenile.

The attorney who represented a juvenile at the arraignment was unlikely to provide subsequent representation at the adjudication hearing. The large number of juveniles to be arraigned invariably precluded the attorney's meeting with any of them prior to their appearance before the judge. The attorney often must represent the client preliminarily, without having sufficient knowledge of the facts in the case. [84] In June of 1981 this central system of "soundings" was disbanded. [85] The system has been changed so that the same attorney (or an attorney in the same division) representing a client at arraignment is likely to represent that same client at the adjudication hearing. [86]

After the arraignment, the attorney representing the client schedules pre-hearing interviews to gather evidence needed for the offender's defense. Sometimes the juvenile's parents or guardian are not interviewed because the attorney is unable to contact them. [87]

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[84] Maxine Cohen, attorney, Public Defender's Office, Interview in Miami, Fla., Nov. 19, 1980.

[85] Judy Alves, attorney, Juvenile Division, Public Defender's Office, telephone interview, Apr. 22, 1982.

[86] Bennett H. Brummer, Public Defender, Eleventh Judicial Circuit of Florida, letter to Paul Alexander, Apr. 6, 1982.

[87] Ibid.

The Florida Department of Health and Rehabilitative Services intake counselor is responsible for evaluating the home life, school performance, and past record of the offender. This information is vital to the attorney representating the juvenile. The Public Defender, perceiving that HRS was not adequately serving its juvenile clients, employed three social workers to assist P.D. attorneys. 88/ The social workers thoroughly evaluate clients, which helps attorneys present their cases and influence post-adjudicatory dispositions. Given the number of cases assigned to the P.D., however, this program has been unable to serve the entire client population adequately.

Often, the attorney representing a juvenile has not handled the case from its inception. Even when circumstances are otherwise, the pre-hearing interview that might provide the attorney with insight into the juvenile's background may only result in a recital of the circumstances of arrest. The attorney must then appear before the court with scant knowledge about the possible causes for the juvenile's behavior.

The nature of the juvenile adjudication process calls for family involvement in cases of delinquency. Parents or guardians are asked to attend the intake conference with HRS,

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88/ Maxine Cohen, testimony, Hearing Transcript, p. 388.

the pre-hearing interview with the P.D., and the adjudicatory hearing and disposition. This type of involvement works a particular hardship on low-income parents who must take time off from work at each step of the process and arrange for transportation. Even if parents are able to take this time off, the juvenile justice system moves slowly, causing parents to spend inordinate amounts of time waiting. As Maxine Cohen, an attorney with the Public Defender, pointed out in her testimony:

> [A]s with any welfare system...getting welfare, getting food stamps, you are going to have to wait in line for half a day....I have seen situations where the inability of a parent to miss a day's work and come and sit in court for half a day, or a whole day with their kid, or sit for an intake conference, is mistaken for a lack of interest on [the] part of that parent. It is not lack of interest. It may be frustration with the system. 89/

The perception operating within the juvenile justice system that a parent's presence is indicative of more interest in the

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89/ Cohen Testimony, Hearing Transcript, p. 381.

child's behavior works an additional hardship on the black offender. Post-hearing disposition results in a treatment plan appropriate to the seriousness of the offense. 90/ If the parents do not participate in the adjudicatory process, the juvenile justice system generally intervenes without the use of family support. The child may be removed from the home environment and placed in a State training school or a similar restrictive program. 91/ Because the parents of white juveniles are more likely to be present at each step of the adjudicatory process, disposition may be less severe for white offenders. 92/ Because of economic disparities between whites and minorities, white parents are more likely to be able to place their children in special schools and private programs. Dispositions for black juveniles often fail to take into account the socioeconomic factors that may contribute to delinquent behavior. This failure, coupled with the inadequate resources available to HRS, precludes effective counseling with black juveniles and their families.

90/ Fla. Stat. Ann. §39.001(2)(a) (1979).

91/ *Id.*, §39.11(1)(c).

92/ Maxine Cohen, interview in Miami, Fla., Oct. 16, 1980.

The interlocking processes of discrimination clearly disadvantage black juvenile offenders. Housing discrimination has forced most of Dade County's blacks into low-income, high density neighborhoods. Employment discrimination has confined blacks to low-paying, low-skilled jobs, often located far from black neighborhoods. Lacking private transportation and money for babysitters, many black parents must leave their children unattended for long periods of time. Youth unemployment, due largely to a lack of vocational skills and the school system's inability to provide an adequate education, also leaves many young blacks with unstructured, unsupervised free time. By its failure to intervene effectively, the juvenile justice system reinforces and perpetuates the process of discrimination that has fostered black juvenile delinquency.

CHAPTER VII

ADMINISTRATION OF JUSTICE: A CONTINUING SORE SPOT

Dade County's criminal justice system has been a continual source of abrasion to the black community. Robert Simms, Executive Director of the Dade County Community Relations Board, testified before the Commission:

> [T]here is a feeling with the black community that there is an internal conflict occurring within certain [police department] enforcement jurisdictions between officers that want to righteously enforce the law with justice and others who would do otherwise; that when this conflict arises, those who would choose to righteously enforce the law are either intimidated, chastised [or] ostracized.... 1/

Other members of Miami-Dade's black community concurred. 2/ Mr. Simms noted,

> It is perceived that there is unequal treatment of enforcement to the black

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1/ Robert Simms, testimony, Hearing before the U.S. Commission on Civil Rights, Miami, Fla., Dec. 8-11, 1980, unpublished transcript (hereafter cited as Hearing Transcript), p. 1168.

2/ See, e.g., Otis Pitts, Executive Director, Belafonte-Tacolcy Center, testimony, Ibid., pp. 1204-05.

> community, especially in certain enforcement jurisdictions. Whether this be true or not does not necessarily matter. It is perceived to be that way. Therefore, for the perceiver, I suspect that is the truth. 3/

The Miami riots of 1969 directly resulted from a harsh police crackdown, and the fatal beating of a black Miamian by local police officers led to the riots of 1980. In this regard, Miami's civil disturbances have been similar to those in other American cities. Although there is no typical riot and no typical riot pattern, racial violence in America almost invariably has occurred when an encounter between law enforcement officers and a member of the black community escalates to physical confrontation. 4/

The 1980 disturbances in Miami did not immediately follow such an incident; the riots occurred only after police officers were arrested, prosecuted, tried, and acquitted for their role in the beating death of Arthur McDuffie. Nor did the riots

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3/ Simms Testimony, pp. 1167-68.

4/ See, e.g., Report of the National Advisory Commission on Civil Disorders (Washington, D.C.: Government Printing Office, 1968), p. 157. This Commission is usually identified as the Kerner Commission, after its Chairman, former Illinois Governor Otto Kerner.

primarily result from a series of incidents involving the criminal justice system and the black community, although there had been such a series of incidents. Anger and frustration had accumulated within large segments of the black population as a result of years of pervasive and institutionalized exclusion from full participation in the economic and social life of the city. Mistreatment and unequal treatment of blacks by the Dade County criminal justice system are but one part of this larger pattern of discrimination and exclusion.

Steps to improve the caliber of policing in the black community and to control racism in the courthouse can reduce the likelihood that the criminal justice system will trigger a riot, but they cannot remove such risks entirely until underlying problems are resolved. Both before and since the 1980 riots, Dade County's two principal law enforcement agencies made administrative and policy changes designed to reduce tensions and improve relations between the police and the black community. Yet, as the chiefs of each department acknowledged, unless Miami addresses and resolves the root causes of the riots, the police and the black community will come again to confrontation. 5/

5/ Kenneth Harms, Chief, Miami Police Department and Bobby Jones, director, Dade County Public Safety Department, testimony, Hearing before the U.S. Commission on Civil Rights, Miami, Fla., Dec. 8-11, 1980, unpublished transcript, pp. 1326-32 (hereafter cited as Hearing Transcript).

Finding 7.1: For almost 2 years before the Miami disturbances, a series of incidents involving the black community and law enforcement officials increased racial tension which culminated in the 1980 riots. The incidents reinforced the black community's belief that a dual system of justice prevailed in Dade County---a system in which blacks received unequal treatment before the law.

In early May 1980, after five white police officers were acquitted of brutally murdering Arthur McDuffie, a black insurance executive, the Miami-Dade black community exploded with violence and anger. In the minds of many blacks, the verdict in the McDuffie case was one more outrage against the community by law enforcement officials. The McDuffie case sparked the rioting in Miami's Liberty City community and the violence that occurred in black enclaves throughout Dade County for several days in May.

On May 22, 1980, immediately after the riots, Governor Robert Graham appointed a citizen's committee to find the causes of the violent civil disturbances. 6/ The committee also was asked specifically to look into the Dade County State Attorney's Office and its handling of five racially sensitive cases. 7/ All but one involved altercations between police and members of the black community. The Dade County State

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6/ Report of Governor's Dade County Citizens' Committee (October, 1980), p. 1 (hereafter cited as Citizens' Committee Report).

7/ Ibid., p. 2.

Attorney's Office had been the subject of considerable public controversy, and its handling of the five cases was perceived as exacerbating the racial tension in Miami. 8/

The first case involved the Dade County Public Safety Department. 9/ In February 1979, the department served a search warrant on the wrong house. The police erroneously entered and searched the home of Nathaniel LaFleur, a 48-year old black school teacher. 10/ The police officers involved testified that they believed they were executing a valid search warrant for drugs at the correct address. 11/ However, according to Mr. LaFleur, when he refused to submit to the unauthorized search, he was forcibly arrested and beaten up by police. His residence was ransacked and left in total disarray. 12/ Medical reports show that Mr. LaFleur received a scalp laceration, a contusion of the head above the

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8/ Miami Herald, Apr. 1, 1980, p. 2-B; Washington Post, May 23, 1980, p. A12.

9/ The Dade County Public Safety Department was officially renamed the Metro-Dade Police Department on July 21, 1981.

10/ Citizens' Committee Report, p. 29.

11/ Supplement to the Final Report of the Dade County Grand Jury-Fall Term 1978 (May 8, 1979), p. 3 (hereafter cited as Supplement to Grand Jury Report).

12/ Miami Herald, Feb. 14, 1979, pp. 1A, 16A; Feb. 17, 1979, pp. 1B, 2B.

right eye, swelling on the back of the head, multiple bruises on the shoulder, elbow, left hand, left chest, lower right cheek and right flank, back injuries, right chest injuries, and a fracture of the ribs. 13/ His son, who arrived home during the altercation, was also arrested and allegedly assaulted by the police without cause. 14/

The incident was widely reported in the news media as "The Wrong House Drug Raid" or "The LaFleur Case." 15/ The State Attorney, however, found no cause to prosecute the officers involved, 16/ and the grand jury, although critical of the "inexcusable" acts of negligence of the officers and of the widespread use of profane language and racial slurs by police, subsequently decided that criminal charges were not warranted. 17/

13/ Citizens' Committee Report, pp. 32-33.

14/ Miami Herald, Feb. 14, 1979, p. 16A; Miami Herald, Feb. 17, 1979, p. 1B.

15/ Miami Herald, Feb. 14, 1979, p. 1A; Feb. 17, 1979, p. 1B; April 11, 1979, pp. 1C, 2C; April 12, 1979, p. 3C; April 20, 1979, p. 3D; April 21, 1979, p. 3B.

16/ Citizens' Committee Report, p. 34; Miami Herald, April 11, 1979, pp. 1C, 2C.

17/ Supplement to Grand Jury Report, pp. 2, 5.

The second case involved an 11-year old black female who claimed that she had been sexually molested by a Florida highway patrolman. 18/ The initial investigation by the Florida Highway Patrol concluded that the incident did not involve a highway patrolman, 19/ despite information provided by the victim identifying the patrolman. When the case was later reopened, Trooper Willie Jones was charged as the molester. 20/ Prior to the trial, Jones was willing to plead guilty in return for no jail sentence after plea discussions with the State Attorney's Office. 21/

The judge before whom the case was first brought, the Honorable John I. Gordon, said that if Jones would plead guilty, he would sentence him to the mentally disordered sex

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18/ Ibid., pp. 37-42.

19/ Ibid., pp. 37-38.

20/ Ibid., p. 38.

21/ State v. Jones, No. 79-2078 (11th Cir. Fla. 1979), Hearing Before Judge Gordon, Apr. 4, 1979. But see Reno letter, Appendix B, p. 3., noting that prior to July 1, 1979 the State Attorney's Office refused to negotiate a plea to no jail time (in custody treatment) because it construed the pertinent statute as not authorizing a commitment to the mentally disordered sex offender program unless the offender was incarcerated.

offender's program for a 2-year commitment. 22/ He also seriously questioned the State Attorney's handling of the case:

> I will just be as candid with you, as I can. To me, this case in some manner smacks of racism, and I am not so certain that the State Attorney's Office would be asking the same arrangement if this defendant was black and the victim was a young white girl, and it appeared to me to be in part some sort of sweetheart deal that I would not be a party to....
>
> You must understand me. I do not assert that the defendant, his conduct, is in any way race related. What I do feel uncomfortable with, however, is the manner in which this case was originally presented to me and the fact that the State Attorney's Office would...not object to the plea, would not stand up in court and affirmatively state that this was a negotiated plea. I have serious questions whether this defendant was black and this young victim

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22/ Id., p. 11.

> was white, whether the State Attorney's Office, the Public Safety Department and the Highway Patrol would, in fact, be making the same representation to me now as they are for this defendant, and that is what upsets me. 23/

The assistant state attorney, however, denied that race was a consideration in the handling of the case. 24/ The patrolman's defense counsel told the court that his client received special consideration, not because of his race, but because of his occupation, a consideration that Judge Gordon found just as indefensible:

> Defense Counsel. Judge, the reason that everyone wants to stick up for the man is because he is a police officer, not because he is white.
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> The Court. That is equally as bad. That is protecting one's own and that is because he is in law enforcement. Perhaps the State Attorney, with their connection with law enforcement, and even PSD--who I wholly

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23/ Id., pp. 10-11, 13-14.

24/ Id., p. 14.

> admire—feel as though in this case they want to protect their own and perhaps their recommendations would not be what they are now if this man had been a civilian, and I just do not think that is proper. I just do not think it is proper. 25/

Because the judge intended to sentence him to a sexual offender's program, which included incarceration, the patrolman decided not to plead guilty. Judge Gordon subsequently removed himself from the case. 26/

The case was then reassigned to Judge David L. Levy who was unaware of the prior negotiations. Judge Levy accepted a nolo contendere (no contest) plea and placed Officer Jones on probation for 3 years with the special condition that he "seek and receive psychiatric treatment as an outpatient for as long as and in such manner as deemed appropriate by the treating doctors." 27/

25/ Id., p. 15.

26/ Id., pp. 16-24.

27/ Citizens' Committee Report, p. 40.

The case was widely publicized and raised serious questions about the administration of justice in the county. 28/ In response, Judge Levy appointed a special Acting State Attorney to investigate how the State Attorney's Office handled the case. The Acting State Attorney's report was highly critical of both the police investigation and the handling of the case by the State Attorney's Office. 29/

The third case that troubled the black community was the shooting death of a 21-year old black male, Randy Heath, by an off-duty Hialeah police officer. Heath was shot in the back of the head at close range while standing pressed against a wall. 30/ A county judge at the inquest found probable cause to believe the homicide was criminal and referred the case to the State Attorney's Office. 31/ After an inordinately

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28/ Ibid. See also Dade County Community Relations Board, Forum Report and Action: Community Review of the Criminal Justice System as Reported in the Case of Sexual Molestation by a Florida Highway Patrolman (February 1980), (June, 1980); Miami Courier, Feb. 2, 1980, p. 1; The Miami Herald, Jan. 24, 1980, p. 1A.

29/ Report of the Acting State Attorney, Crim. Div. No. 79-2078 (11th Cir. Fla.) (May, 1980) (hereafter cited as Report of the Acting State Attorney) (maintained in Commission files).

30/ Citizens' Committee Report, p. 42; The Miami News, Apr. 2, 1980, p. 1A.

31/ Citizens' Committee Report, p. 42; The Miami Herald, Feb. 19, 1980, p. 1A.

delayed investigation, 32/ the State Attorney's Office determined that the killing was not criminal. 33/ A later investigation, however, compelled the State Attorney's Office to reverse its decision. 34/

During the interim, the grand jury independently requested that the case be presented. 35/ Although the State Attorney's Office decided that criminal charges were appropriate, the office declined to file them and presented the case to the grand jury as it had requested. The grand jury later refused to indict the officer. 36/

32/ After the inquest in September, 1979 there followed "an untoward delay of more than six months...which the State Attorney's Office did nothing to prevent. This delay was inexcusable...." Citizens' Committee Report, p. 42; Charles Mays, Assistant city Attorney for the city of Miami, testimony, Hearing Transcript, p. 1427.

33/ Janet Reno, State Attorney for the 11th Judicial Circuit, Florida, testimony, Hearing Transcript, p. 1413; Mays Testimony, Ibid., p. 1429.

34/ Reno Testimony, Hearing Transcript, p. 1413; Mays Testimony, Hearing Transcript, p. 1429.

35/ Citizens' Committee Report, p. 43 states, "The State Attorney testified that she did not ask the Grand Jury to take over the investigation, but that, in fact, the Grand Jury took the investigation away from her."

36/ Interim Report of the Dade County Grand Jury--Fall Term 1979 (Apr. 1, 1980).

The fourth case that the Governor's citizen's committee investigated was the prosecution of Johnny Jones, the black superintendent of schools in Dade County. Dr. Jones first was charged with grand theft for using public monies under his control for his personal benefit 37/ and later was charged with soliciting perjury, tampering with a witness and accepting bribery from a contractor who did business with the school system. 38/ Dr. Jones, a nationally known educator, was the highest ranking black public official in Dade County. His trial generated considerable public interest and, under the rules of the Florida Supreme Court, was televised. 39/

Compared to the handling of the other highly publicized and racially sensitive cases, the State's prosecution of Dr. Jones appeared to the black community to be particularly aggressive. 40/ The prosecution filed the second criminal charge on the eve of the first trial and excluded black

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37/ New York Times, May 19, 1980, p. B-10.

38/ The Miami Herald, Sept. 16, 1980, p. 11-B.

39/ Petition of the Post Newsweek Stations, Florida, Inc., 370 So. 2d 764 (Fla. 1979); 32 FLA. STAT. ANN., Code of Jud. Conduct Can. 3(A)(7)(West 1980).

40/ Perry Testimony, Hearing Transcript, pp. 1176-1177; Dora Lee, "The Question Is Due Process...Not Guilt or Innocence," The Miami Times, Feb. 28, 1980, p. 3.

panelists from the jury. 41/ Less than 3 weeks before the riots, the all-white jury convicted Dr. Jones of attempting to use public funds for his personal use. 42/

The fifth case was the McDuffie case. 43/ In the early morning hours of December 17, 1979, Arthur McDuffie, a 33-year-old black insurance executive, led law officers on an 8-minute, high-speed chase through the streets of Miami and Dade County. When he was apprehended, Dade County Department of Public Safety officers allegedly beat him, using nightsticks and "Kel-lite" heavy-duty police flashlights; 44/ he died 4 days later. 45/ Manslaughter and murder charges were filed against three officers, 46/ and two other officers were

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41/ Citizens' Committee Report, pp. 45-47.

42/ New York Times, May 19, 1980, p. B-10. The second trial, held after the riots, resulted in an acquittal on the bribery charge and a conviction on a misdemeanor charge for witness tampering. Miami Herald, Oct. 18, 1980, p. 1A.

43/ Citizens' Committee Report, pp. 47-51.

44/ Offense Report, Dade County Public Safety Department Case No. 369734-2 (hereafter cited as Offense Report) (maintained in Commission files).

45/ Report of the Dade County Medical Examiner, Case No. 79-3424 (Dec. 22, 1979) (maintained in Commission files).

46/ State v. Diggs, Cr. Case No. 79-21601A (11th Cir. Fla. 1980). On December 28, 1979, Officer Alex Marrero, Sgt. Ira Diggs, Officer Michael Watts and Officer William F. Hanlon, all from the Dade County Department of Public Safety, were charged

charged 47/ with participating in an attempt to cover up the incident by making it appear accidental. 48/ At the trial, which was moved from Miami to Tampa, Florida, evidence was presented that Mr. McDuffie was jumped upon and beaten

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46/ (Con.t) with manslaughter. Offense Report. Two other officers, Charles R. Veverka and Mark Meier, were granted immunity from prosecution and later testified for the State Attorney's Office at the trial. *The New York Times*, July 29, 1980, p. A11. On January 4, 1980, Officer Hanlon was granted immunity from prosecution in exchange for his testimony. Investigative Files, Dade County Department of Public Safety-Internal Review, *Memorandum of Investigation from Sgt. L. Saunders to Bobby L. Jones, Director* (undated) S.I. #79-521, p. 19 (maintained in Commission files). On February 1, 1980, second degree murder charges were filed against Officer Marrero. Ibid., addendum of Feb. 5, 1980 (maintained in Commission files).

47/ State v. Diggs, Cr. Case No. 79-21601A (11th Cir. Fla. 1980). On December 28, 1979, Sgt. Herbert Evans of the Dade County Public Safety Department was charged with tampering with evidence and orchestrating the coverup. Offense Report. On February 1, 1980, Officer Ubaldo Del Toro of the Dade County Public Safety Department was charged with being an accessory after the fact for his involvement in the coverup. Investigative Files, Dade County Department of Public Safety-Internal Review, *Memorandum of Investigation from Sgt. L. Saunders to Bobby L. Jones, Director* (addendum of Feb. 5, 1980) S.I. #79-521 (maintained in Commission files).

48/ The first police reports of the incident stated that Mr. McDuffie's injuries were sustained when he fell from his motorcycle after running into a curb. It was thereafter determined that no such accident had occurred, but that police officers had vandalized the motorcycle with nightsticks and, in an attempt to create the appearance of an accident, had driven over it with a police squad car and scraped up the street with a tire iron. Offense Report.

after calling out, "I give up." 49/ As he was lying on the ground handcuffed, an officer allegedly straddled him and swung a Kel-lite flashlight or baton with both hands from behind his back over his head and delivered two or three full-force blows to Mr. McDuffie's skull. 50/ Dr. Ronald Wright, Dade County's chief deputy medical examiner, testified that the blows received were equivalent in force to a fall from a four-story building. Dr. Wright also stated that Mr. McDuffie suffered the worst brain damage he had ever seen in 3,600 autopsies. 51/

At the conclusion of the 49-day trial, the all-white jury deliberated less than 3 hours and acquitted all five defendants of all charges. 52/ Coming as it did in the wake of the LaFleur, Heath, and Jones cases, the McDuffie verdict was perceived as more than just an isolated failure of the criminal

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49/ The New York Times, July 29, 1980, p. All. Conflicting evidence attributing different actions to various officers was reportedly a contributing factor in the acquittal. Ibid.

50/ Miami Herald, April 30, 1980, p. 4B.

51/ The New York Times, May 9, 1980, p. A20.

52/ New York Times, July 29, 1980, p. All. The judge had earlier directed an acquittal verdict as to the charges against defendant Del Toro. Ibid.

justice system. To the black community and many others in Miami and elsewhere, the McDuffie verdict appeared to be the final proof that the criminal justice system in Dade County was incapable of condemning official violence against blacks. 53/

The Governor's citizens' committee explicitly recognized that the major problem confronting the Dade County criminal justice system was its lack of credibility in the black community. 54/ Credibility, the committee noted, is largely a function of appearance, and that events and not ignorance convinced many that Dade County operated a racist justice system. 55/ The justice system, the committee found, is severely hampered without the confidence of the community:

> The Committee was deeply moved by the statement of one of the speakers appearing before it. He described plaintively his conclusions about several incidents in language approximately as follows: "A group

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53/ New York Times, May 19, 1980, p. A1; Washington Post, May 19, 1980, p. A1, A10.

54/ Citizens' Committee Report, pp. 25-29.

55/ Ibid., p. 67.

of white police officers break into the wrong house, beat up a Black man and his son, and they are still on the force; a White highway patrolman makes sexual advances upon a Black girl in his car, and nothing happens to him; a White policeman shoots a young Black man in the back of the head and is charged with nothing; another group of White policemen beat a Black man to death and are turned loose."

* * * *

So perceptions are really important. They constitute signals flashing the danger of rising emotions and frustrations. They indicate that in the minds of the perceivers something is radically wrong. Further, whether borne out by fact or not, poor perceptions reveal a lack of confidence on the part of many citizens in the criminal justice system, a condition that does not lead to the proper functioning of the system. 56/

56/ Ibid., pp. 26-27.

Minimizing the importance of community attitudes and perceptions by ascribing them to ignorance, the committee said, will not dispel the belief that a dual system of justice exists. 57/ What remained was a criminal justice system incapable of clearly condemning excessive physical force against black citizens and unable to dispel the belief that the system is unfair and racist.

Finding 7.2: Independent official investigators who have reviewed the administration of justice in Dade County have been highly critical of police investigations and of the State Attorney's handling of highly publicized and racially sensitive cases.

Both the Governor's citizens committee and the specially appointed Acting State Attorney in the Willie T. Jones case identified particular actions and decisions of law enforcement officials that were troubling. Major findings of these two reports on the administration of justice in the five cases reviewed focused on inadequacies in investigations, improprieties in the relationship between the State Attorney's Office and the police, and repeated failures of the State Attorney to be straightforward and forthright about her office's handling of those highly publicized incidents. 58/

57/ Ibid., pp. 28-29.

58/ Ibid., p. 38.

With regard to the investigation conducted by the Dade County Department of Public Safety in the LaFleur case, the committee concluded:

> Our review of the Internal Review Section's investigation of its own officers leads to the inescapable conclusion that the Internal Review Section's review was totally unsatisfactory.
>
> A critical examination of the Public Safety Department's investigation gives the distinct impression that it was conducted, not for the purpose of ferreting out the truth, but for the purpose of clearing the officers involved of criminal wrongdoing. 59/

The committee was particularly critical of the failure of the internal review investigator to account for the documented injuries sustained by Mr. LaFleur. 60/ The investigator focused instead on inconsistencies in the victim's statement while "turn[ing] a blind eye on...material inconsistencies" in the officers' statements. 61/

59/ Ibid., pp. 29-30.

60/ Ibid., pp. 32-33.

61/ Ibid., p. 33.

The committee found the Florida Highway Patrol investigation in the Willie T. Jones case "so grossly inadequate for the offense involved and the evidence available that it actually bordered on criminal negligence." 62/

The committee described the Public Safety Department's investigation and handling of the Willie T. Jones case as "callous" and "another example of police agencies trying to protect their own people by investigating themselves." The committee found that internal review in such cases "has proven to be totally unsatisfactory in the State of Florida." 63/ The Governor's committee also questioned the practices and decisions of the State Attorney's Office, in particular the relationship between the State Attorney's Office and the police agencies when complaints allege improper police action and conduct. According to the committee, "[t]he State Attorney appears to have aligned herself on the side of the police even when such an alignment is insupportable," 64/ which the committee considered "improper and inappropriate." 65/

62/ Ibid., p. 37.

63/ Ibid., p. 38.

64/ Ibid., p. 61.

65/ Ibid., pp. 34-35.

With regard to the State Attorney's Office handling of the Willie T. Jones case, the committee observed:

> The Judgment rendered in this case is not unusual for a first offender, with the psychiatric problems evidenced here and in light of the difficulties that the State would have had in securing a conviction under circumstances where the testimony consists of an eleven year old female testifying against a Florida Highway Patrol Officer with an unblemished record. 66/

The committee chastised the State Attorney's Office, however, for "internal confusion" and "mishandling of the plea negotiations" 67/ and found that a principal cause of this

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66/ Ibid., pp. 41-42. A subsequent review by the State Attorney's Office of all "lewd and lascivious" charges brought during the period 1976 through 1979 supports the Committee's finding. Ninety cases were filed during that period where the defendant had no prior criminal record and was charged with a lewd and lascivious assault on a minor. In 88 cases the defendant received probation. In only two cases did the sentence include incarceration; one defendant was incarcerated for 6 months, another for 60 days. Seven defendants were placed in "in-custody" psychiatric programs and others were placed in either outpatient or residential programs as recommended by the examining psychiatrist. Memorandum from the Office of the State Attorney (undated) (maintained in Commission files).

67/ Citizen's Committee Report, p. 42. The committee report further stated that "we do not find that the State Attorney's office actions in this case were in any way racially motivated." Ibid.

confusion was that "so many different Assistant State Attorneys were involved over a period of time that they could not agree among themselves on what, if anything, had been agreed to by the State." 68/ The committee was also critical of the State Attorney's unwillingness to be straightforward about the plea bargaining:

> [There developed] a dispute over whether or not the State Attorney's Office agreed to and participated in the plea negotiations.... [I]nstead of accepting responsibility for what had occurred and properly explaining the appropriateness of the result, the State suggested that it was the action of the Court and not the State Attorney's Office that caused the Judgment of probation to be entered in this case....[T]he State Attorney's suggestion that the Judge in this case had erred was totally improper and without foundation. Nothing could be further from the truth. The Court acted properly on the knowledge and information before it. 69/

68/ Ibid., p. 41.

69/ Ibid., pp. 40-41.

The Governor's committee also criticized the State Attorney's decision in the Randy Heath case to neither file criminal charges before the grand jury acted nor to inform the grand jury of her intention to do so:

> This Committee...cannot understand the manner in which this case was processed by the State Attorney and her office. Since the State Attorney acts as a one-person Grand Jury under the laws of the State of Florida and since it is unnecessary to obtain Grand Jury action to charge a person with a crime less than capital, we are unable to understand why she did not charge Larry Shockley with the crime of manslaughter if she honestly and conscientiously believed that probable cause existed to so charge him. Officer Larry Shockley is still employed by the Hialeah Police Department as a police officer. This is appalling and unconscionable to this Committee. 70/

70/ Ibid., pp. 44-45.

In reviewing the State Attorney's handling of the prosecution of Dr. Jones, the Governor's committee found no justification for filing a second set of criminal charges on the eve of the first trial:

> [T]he explanation offered by the State Attorney for returning the second charge against Johnny Jones on the eve of his first trial, i.e., that it was the only way to make Mr. Jones aware of certain evidence that the State intended to use at the first trial, has no basis in fact or law. The Rules of Criminal Procedure provide many means of disclosing evidence to defense counsel without the necessity of having to file additional charges against the defendant. We will not speculate on other possible reasons this action was taken by the State Attorney's Office, but suggest that she reexamine this practice in the interests of justice. 71/

71/ Ibid., p. 47.

The committee also reviewed the State Attorney Office's handling of the LaFleur case but independently concluded that the officers' behavior had been excessive and unjustified. 72/ Based on the State Attorney's testimony, no charges were brought because it was not possible to determine which officer or officers were responsible and under what circumstances the injuries were sustained. The committee, nevertheless, castigated the State Attorney for "going into the black community and trying to convince it that the officers...were not guilty of any wrongdoing." 73/ In its review of the McDuffie case, the committee report emphasized that "nothing will erase the ugly and shocking blemish that this case has placed on our criminal justice system." 74/ The committee's criticisms about the handling of the McDuffie case included noting that charges were filed hastily without sufficient time to investigate and evaluate the case, 75/

72/ Ibid., pp. 33, 36.

73/ Ibid., p. 34.

74/ Ibid., p. 47.

75/ The committee report stated: "We believe that the State Attorney's Office acted in haste in this matter. The facts were so repulsive and the incident so shocking as to catapult the State Attorney's Office into filing the charges approximately one week from the time that the matter came to its attention. We believe such haste did not allow an adequate amount of time to properly investigate and evaluate all of the parties and all of the evidence. Ibid., pp. 48-49.

and that the prosecution did not vigorously contest the change of venue from Miami to Tampa. 76/ The committee also criticized the prosecution's decision to ask no questions of the impaneled jury that might have elicited prejudice. 77/

The report of the judicially appointed Acting State Attorney concerns only one case, the prosecution of the highway patrolman, Willie T. Jones, for sexually molesting a young girl. The Acting State Attorney termed it a clear error in judgment to have three uniformed white male police officers question a child who alleged that she was sexually molested by another white male policeman. 78/ The report to the court demonstrated that there were other available options ignored by

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76/ "[W]e do not believe that the State Attorney vigorously opposed the Defendant's application for change of venue, nor did she present any evidence in opposition to the motion for a change of venue. We do not know whether or not venue would have been changed regardless of the opposition of the State, but this case demanded a personal appearance by the State Attorney and a vigorous opposition to the application for change of venue: this she failed to do." Ibid., p. 49.

77/ "This committee was also surprised to hear that the State Attorney's office did not engage in a complete and thorough examination of prospective jurors by personal questions of the jurors designed to ferret out any prejudices against the type of evidence that the State knew it would have to present. It is the State Attorney's position that the Court asked all of the necessary questions and that, as a strategic or tactical maneuver, their actions in this regard were appropriate." Ibid., pp. 49-50.

78/ Report of the Acting State Attorney, p. 5.

the police such as the Dade County rape treatment center which has facilities for both physical and mental examinations. The report concluded that the lack of such examinations, in essence, forced the Court into the position of sentencing without the benefit of being presented with all the facts. Subsequent psychological and physical examinations of the victim, undertaken at the behest of the victim's mother, revealed that the child was still withholding additional facts and that there was evidence of genital injury, although the time lapse precluded a positive finding that the injury occurred as a result of the assault. The author noted:

> Had the child been timely taken by the police to the Dade County Rape Treatment Center, we might now know whether [an injury discovered during the physical examination] resulted from Jones' assault and the facts subsequently ascertained by Drs. Haber and King would have been available to the Court prior to sentencing. Instead, this Court was left unaware of the full facts of the assault and its physical and psychological effect upon [the victim]. 79/

79/ Id., pp. 5-6 (footnote omitted).

The Acting State Attorney's report also disclosed that the prosecution had failed to update its investigation after criminal charges were filed and had permitted the victim to make statements without the assistance or presence of an Assistant State Attorney and without her own counsel:

> The police and State Attorneys Office expended more effort to assure the comfort of the defendant Jones than it did to comfort [the victim]. Something is wrong when the defendant is accorded preferential treatment and his victim is denied even the most basic of attention. 80/

Finding 7.3: The Dade County State Attorney's Office has no clear written policies pertaining to the filing of criminal charges or to negotiated settlements in criminal cases. The State Attorney's Office also challenges potential jurors on the basis of race in the jury selection process. The practices of the State Attorney's Office reinforce the widespread belief that the office lacks consistent policies regarding the use of the grand jury, engages in covert plea negotiations when expedient, and systematically excludes blacks from juries.

The State Attorney's Office and the Grand Jury

In Florida, the State Attorney is a constitutional officer who is elected for a 4-year term to prosecute all criminal trials. 81/ Felony charges, except in capital cases, may

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80/ Id., p. 10.

81/ FLA. CONST. art. V, §17.

be filed directly by the State Attorney or may be lodged by an indictment from the grand jury, under Florida law. 82/ The Governor's committee was particularly perplexed by the fact that certain cases involving police misconduct were initiated by direct filing of criminal charges, while others were presented to the grand jury:

> This Committee finds it strangely disconcerting that there are no standard procedures governing the presentation of cases involving police misconduct to the Grand Jury. In some instances, such cases are presented to the Grand Jury for action, while in other cases they are not. It is also interesting to note that, in each of the recent cases of purported police wrongdoing which were reviewed by the Grand Jury, not a single indictment has been returned. We suggest that this lack of standard procedures creates confusion and concern in the minds of the public. This Committee further concludes that a standard policy or operating procedure should be

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82/ FLA. STAT. ANN. R. Crim. Pr. 3.140(a)(West 1980).

> adopted with reference to complaints against the police. 83/

Testifying before the United States Commission on Civil Rights, State Attorney Janet Reno conceded that her office has no written policy on the use of the grand jury but maintained that a policy does exist:

> Ms. Reno. [The State Attorney's Office] does not have any written policies because I think our charging decisions are governed by the decision of the Florida Supreme Court which says that if you had probable cause plus the belief that there is a possibility that you can prove the case beyond and to the exclusion of a reasonable doubt, then charges should be filed. 84/
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> * * * * *
>
> I think I should charge in all non-capital cases where I believe there is probable

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83/ Citizens' Committee Report, p. 35 (footnote omitted).

84/ In re Rules 3.131(b), Florida Rules of Criminal Procedure, 289 So.2d 3 (1974) to which the State Attorney was presumably referring, Cf. Reno Testimony, Hearing Transcript, p. 1455, states: "Before filing information every state attorney should not only seek probable cause in his investigations but also determine the possibility of proving the case beyond and to the exclusion of every doubt", but offers no guidance as to whether charges should be brought by indictment or information.

cause to believe that the crime was committed and the defendant committed the crime, and there is a possibility of proving that crime beyond and to the exclusion of every reasonable doubt.

In sensitive cases where I don't believe that exists, I think I should refer it to the Grand Jury, and point out that if they want to they should get a special prosecutor so they can act as a check and balance on my decisions.

Counsel. So you would only go to the Grand Jury if you yourself were not convinced that the essential elements for prosecution were present?

Ms. Reno. I think I should consider the Grand Jury as a check and balance on me with full knowledge that each Grand Jury is advised on a continuing basis that if they don't want our legal advice and want to get a special prosecutor that they are free to do so. 85/

85/ Reno Testimony, Hearing Transcript, pp. 1414-15.

The State Attorney also said that cases are presented to the grand jury when requested, and that in two of the five cases reviewed, those involving Randy Heath and Johnny Jones, the grand jury did make such requests. 86/

By law the State Attorney has discretion in initiating criminal charges. The Governor's committee suggested that she make greater use of the grand jury, noting that charges in the McDuffie case were lodged by direct filing:

> A presentation to the grand jury of the facts of this case might have assisted the State Attorney's Office by having the insights of a civilian body, thereby assisting her in determining who should have been charged and what the charges should have been. 87/

The State Attorney differed. As an elected prosecutor, she felt responsible for personally making the decision to file charges whenever possible. To leave it to the grand jury, she said, would be to "pass the buck":

86/ Reno Testimony, Hearing Transcript, pp. 1414-17. *See also*, *Citizen's Committee Report*, p. 43.

87/ *Citizens' Committee Report*, p. 48.

> I somehow feel that that's intellectually dishonest. I have an obligation to this community to prosecute when I am supposed to and when I can't, say why I can't. [88]

The law, however, does not limit the State Attorney's discretion. Her limitations are self-imposed. The "five infamous cases," as the Governor's committee dubbed them, show that lengthy preparation of highly publicized cases can cause the grand jury to exercise its independent authority and request that evidence be presented to it. When inordinate delays in completing publicized criminal investigations create political and community pressures to which the grand jury responds the oral policies of the State Attorney are circumvented.

Clearly written policies describing the handling of sensitive cases with a minimum of publicity, especially felony cases involving law enforcement officers and cases in which race is an issue, would be responsive to the concerns of the Governor's committee and other critics. [89] They would also focus public discussion on legitimate issues raised by the overlapping roles of the State Attorney and the grand jury, dispelling the perception that the State Attorney develops policy on a case-by-case.

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[88] Reno Testimony, Hearing Transcript, p. 1457.

[89] The State Attorney's Office has developed a policy manual for its attorneys. The manual does not provide standards for plea bargaining and/or settling cases without trial, nor instructions in the use of peremptory challenges.

A clear policy of referring noncapital cases to the grand jury only when a charge cannot in good conscience be filed directly does, however, create additional problems. In the LaFleur case, the State Attorney followed that policy.

> I did not defer to the Grand Jury on LaFleur. I made a decision myself on LaFleur and announced that decision. I announced that decision because I felt I could not in good conscience prosecute based on the charging standards announced by the Florida Supreme Court.
>
> I then went to the community and I also went to the Grand Jury. The Grand Jury issued a report noting that I had urged them to appoint a special prosecutor if they felt necessary.

89/ (Con.t) Instead of giving minimum standards as guidelines for prosecutors, the manual is largely concerned with which are the appropriate forms to be completed and where they are to be filed. State Attorney's Office, 11th Jud. Cir. Fla., Policies and Procedures Manual (Second draft, May 9, 1980) (maintained in Commission files).

> Let me point out that seven of eighteen members were blacks. They examined the circumstances of the LaFleur case and they determined charges should not be filed. 90/

Charles Mays, formerly a chief attorney in the felony division of the State Attorney's Office, explained the difficulties of such a procedure:

> I have a tremendous amount of respect for the present State's Attorney. However, she made a mistake...in that she publicly announced her finding before taking the case to the Grand Jury. To an extent that probably aggravated the problem in that people were probably saying, and maybe rightfully so, that, "Gee, why take it to the Grand Jury? She has spoken, and the Grand Jury is controlled by the State Attorney." 91/

90/ Reno Testimony, Hearing Transcript, pp. 1412-13.

91/ Mays Testimony, Ibid., pp. 1430-31.

Both Ms. Reno and Mr. Mays testified that it was common practice and procedure for the State Attorney's Office to act as legal advisor to the grand jury and to present available evidence, but not to recommend that the grand jury take any action. 92/ The black community, however, does not see the grand jury as an independent body with full review powers. Until the public understands the respective roles of the State Attorney and the grand jury, review of cases by the grand jury will appear meaningless. 93/ Nevertheless, grand jury review of a determination not to charge, particularly in cases involving abrasive police behavior in the black community, provides oversight of otherwise unrestrained prosecutorial discretion by the State Attorney's Office.

To focus on the question of how to charge, however, is not to ignore the decision of whether to charge. A prosecutor has considerable discretion to decide not to prosecute. Such a decision is based on several reasons, which may be only tangentially related. As one commentator noted:

92/ Reno Testimony, Hearing Transcript, p. 1415; Mays Testimony, Ibid., pp. 1434-35.

93/ The Governor's committee recommended a clear, public articulation of the separate roles of the State Attorney's Office and the grand jury in the criminal charging process. Citizens' Committee Report, pp. 27-28.

> Decisions not to charge—or not to charge as fully as the evidence would technically permit—are made for two quite different kinds of reasons. In some instances, a negative charging decision is made because prosecutors believe that conviction is unlikely even though there is probable cause for charging. In others, the negative decision reflects, instead, a judgment that full enforcement would not be in the overall community interest. 94/

The State Attorney testified that full enforcement of the law whenever police misbehavior constitutes a crime is the policy of her office:

> My records of our prosecution of police officers [show that] we prosecuted some...thirty-two law enforcement or criminal justice personnel total in the less than three years [since] I have taken

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94/ Frank W. Miller, Prosecution: The Decision To Charge A Suspect With A Crime (Little, Brown & Co.: Boston, 1969), p. 293. On the charging function, see also, W. Boyd Littrell, Bureaucratic Justice: Police, Prosecutors and Plea Bargaining (Sage Publications, Beverly Hills, 1979), pp. 31-35.

> office. I think any type of police abuse or police corruption is inappropriate. If I can prove a crime I am going to prosecute. 95/

The State Attorney maintains that the decisions not to charge in the LaFleur case, or originally in the Heath case, were based on her decision that the available evidence did not meet the standard for charging as articulated by the Florida Supreme Court. 96/ The standard, however, is inherently subjective. Based upon an interpretation of the available evidence at the charging stage, the prosecutor may conclude that a crime was committed by a particular individual.

If, as part of a clearly written policy, the grand jury reviewed decisions not to charge in important cases, it would provide a check and balance to the State Attorney's decision, which would benefit both the State Attorney and the community. As the eminent legal scholar Kenneth Culp Davis points out:

> Viewed in broad perspective, the American legal system seems to be shot through with many excessive and uncontrolled discretionary powers but the one that stands

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95/ Reno Testimony, Hearing Transcript, p. 1410.

96/ Ibid., pp. 1412-1413.

> out above all others is the power to prosecute or not prosecute. The affirmative power to prosecute is enormous, but the negative power to withhold prosecution may be even greater, because it is less protected against abuse. 97/

Plea Negotiations

Plea negotiations are an established and constitutionally accepted part of the criminal justice system. In Dade County, as elsewhere, many more cases are settled by negotiation than by trial.

One criticism of the State Attorney for her handling of the Jones case concerned the sentence imposed through a plea bargain, and another concerned the openness of the negotiation process itself. The State Attorney's Office maintains that the probationary sentence was entirely consistent with other similar cases; 98/ the Governor's committee concurred but felt that the plea negotiations were mishandled and then

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97/ Kenneth Culp Davis, *Discretionary Justice*, (Urbana: University of Illinois Press, 1971), p. 188.

98/ *Memorandum from the Office of the State Attorney* (undated) (maintained in Commission files).

inadequately explained after they became the subject of public scrutiny. 99/

The State Attorney's fears about the public perception of plea negotiations led her to say:

> [A]nytime you negotiate a case in Dade County someone thinks that something was wrong and somebody made a deal and the sentence was not right....[A] negotiation to me is a situation where you say, "Look, if I plead him guilty, I will give you this deal." There was none of that [in the Willie Jones' case]. 100/

She admitted that, despite her aversion to the process, her office regularly engages in plea bargaining:

> Counsel. I take it that there are occasions where your office does engage in normal plea negotiations that result in a plea bargain; is that correct?
>
> Ms. Reno. Normal and abnormal, sometimes.

99/ Citizens' Committee Report, pp. 41-42.

100/ Reno Testimony, Hearing Transcript, pp. 1419-20.

Counsel. When that does occur, do you believe that the terms of that plea bargain should be made public, should be made part of the public records?

Ms. Reno. Yes, I do. But there are various types of plea negotiations that go on in Dade County.

In some sentences you have the prosecutor and the defense attorney negotiating the case outside the courtroom, come in and present it to the court with no chamber discussion whatsoever, which the court can accept or reject.

In the other sentences the court will declare a recess and ask the prosecutor and his attorney to come into the chambers. In this instance, he says, "What is the State's will?"

"The State only wants five years."

The court, "Would you agree to less?"

The defense, "What about two?"

"I tell you what. If you plead him guilty, I will give him two."

> There are various forms of negotiation in order to extract that guilty plea.
>
> I wish with all my heart that we could do away with that type of negotiation, but we can't because of our Speedy Trial Rules and our caseload. 101/

In the Willie Jones case, the defense counsel expressed his client's unwillingness to plead guilty if that would result in incarceration. 102/ The State Attorney maintains that, although "there were conferences in chambers with other people present at which sentence was discussed" and "[t]here had been discussion back and forth," there were "explicit instructions" not to negotiate the case. 103/ Following these discussions, the State Attorney's Office informed the court that it had "no objection" to a probationary sentence. The distinctions between not objecting to a proposed sentence and agreeing that it is appropriate were discussed at the Commission hearing:

101/ Ibid., p. 1421.

102/ State v. Jones, No. 79-2078 (11th Cir. Fla. 1979) Hearing Before Judge Gordon, Apr. 4, 1979, pp. 23-24.

103/ Reno Testimony, Hearing Transcript, pp. 1419-20.

> Counsel. In an adversary system such as we have, what distinction do you think there is between the prosecutor agreeing to a plea bargained sentence and a prosecutor requesting or not opposing a sentence?
>
> Ms. Reno. I don't know that there is any distinction between saying, "I have no objection," and "I agree, your Honor, that is a good sentence."
>
> Negotiation, however, does have a connotation in this community of some deal having been made which would give the person involved a lighter sentence by virtue of him pleading guilty, and that was not the case here. 104/

Negotiations and pleas do not occur solely because of pressure to expedite court calendars. Prosecutors and defense counsel in numerous cases often prefer to forego the uncertainties of jury trials for strategic and tactical reasons and do so even when limited resources are not a concern. 105/ A few jurisdictions have experimented with

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104/ Ibid., p. 1421.

105/ The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts (Washington, D.C.: Government Printing Office, 1967), p. 10 (hereafter cited as Task Force Report: The Courts.

abolishing plea negotiations. Although these experiments have been hailed as successful by some, other reviewers have noted that when plea bargaining is prohibited, negotiations do not cease, but surface at other discretionary stages in the criminal process. 106/

In its 1973 report on courts, the National Advisory Commission on Criminal Justice Standards and Goals recommended that plea bargaining in criminal cases be eliminated. 107/ Florida law still permits plea negotiations. 108/ The Florida Governor's Commission on Criminal Justice Standards and Goals, the State agency that drafted standards for Florida's criminal justice system, specifically rejected the national commission's goal of eliminating plea negotiations. The Florida commission recognized the legal authority for such negotiations and recommended that prosecutors formulate written policies governing their practices of plea negotiations. 109/ The American Bar Association's Standards for Criminal

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106/ Silberman, Criminal Violence, Criminal Justice (New York: Vintage Books, 1980), pp. 378-79.

107/ National Advisory Commission on Criminal Justice Standards and Goals, Courts (1973), pp. 46-49.

108/ 31 FLA. STAT. ANN. R. Crim. Pr. 3.171(a)(West 1980).

109/ Governor's Commission on Criminal Justice Standards and Goals, Standards and Goals for Florida's Criminal Justice System (1976), Std. CT. 2.01-.02.

Justice 110/ and the National District Attorneys' Association Prosecution Standards 111/ also encourage prosecutors to engage in plea negotiations. When the Florida Rules of Criminal Procedure were revised in 1972, the American Bar Association's standard supporting plea bargaining was adopted and incorporated as law. Rule 3.171(a) of the Florida Rules of Criminal Procedure states:

> Ultimate responsibility for sentence determination rests with the trial judge. However, the prosecuting attorney, the defense attorney, or the defendant, when representing himself, are encouraged to discuss and to agree on pleas which may be entered by a defendant. Such discussion and agreement must be conducted with the defendant's counsel. If the defendant represents himself, all such discussions between him and the prosecuting attorney shall be of record. 112/

110/ American Bar Association, III, Standards for Criminal Justice (Boston: Little Brown, 1980), Vol. III, Std. 14-3.1.

111/ National District Attorneys' Association, National Prosecution Standards (1977), Std. 16.1.

112/ FLA. STAT. ANN. R. Crim. Pr. 3.171(a) (West 1980).

The President's Commission on Law Enforcement and Administration of Justice, in its report exploring the problems presented by plea bargaining, noted that the system operates informally and invisibly with often no formal recognition that the defendant has been offered an inducement to plead guilty. 113/

The commission added that "plea bargaining takes place at a stage when the parties' knowledge of their own and each other's cases is likely to be fragmentary." 114/

When the State Attorney offered "no objection" to a probationary sentence in the Willie Jones case, she was adopting a position specifically permitted by the Florida Rules of Criminal Procedure. 115/ What is unclear is how and why the State Attorney's Office changed its position on the sentence. According to the Acting State Attorney's report, the supervising Assistant State Attorney "would not entertain plea negotiations involving less than in-custody treatment," but the assistant who handled the case following its reassignment was

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113/ Task Force Report: The Courts, pp.9-10.

114/ Ibid., p. 11.

115/ FLA. STAT. ANN. R. Crim. Pr. 3.171(b)(1)(i)(B)(West 1980).

unaware of this limitation and actively lobbied for a probationary sentence requiring only outpatient psychiatric care. 116/

Clearly, one of the causes for confusion in the prosecution of this case was the number of assistant district attorneys handling it and the communication breakdowns. The full course of negotiations was unknown by all parties and could not be communicated to the judge. 117/ A written policy for the conduct of plea negotiations and a requirement that the negotiations be made part of the court record would make the entire process more formal and visible, aiding community understanding and acceptance of criminal adjudicatory procedures.

116/ Report of the Acting State Attorney, p. 7. The report, however, goes on to state: "All evidence which we have reviewed supports the finding...that, from the outset, the State Attorney's Office was actively attempting to covertly convince a judge to accept a plea negotiation involving only probation and outpatient psychiatric care." Ibid., p. 8.

117/ "[T]he investigation and prosecution of the [Willie T.] Jones case displays 'malevolent indifference' for indecent criminal behavior by a white public official against the person of an innocent black child. The record of this case bespeaks an incomplete, half-hearted investigation and a prosecution which expressed greater concern for the defendant than his victim. The quality of the investigation and prosecution of Willie Thomas Jones left...[the]...Court ill-informed on crucial issues which could have been determinative of the defendant's sentence." Ibid., p. 12.

Peremptory Challenges: Excluding Black Jurors Because of Race

In any criminal case, prospective jurors can be dismissed not only for cause, but also upon the peremptory challenge of either party. The distinguishing feature of the peremptory challenge has always been that no explanation is needed. Either party in a non-capital felony case in Florida generally has six peremptory challenges, which it can use to exclude any prospective jurors who have not been discharged for cause. 118/

Jury lists in Florida are culled from voter registration lists. 119/ Registration of black voters is roughly proportionate to black representation in the population. 120/ The relatively small size of the black community and the State's six-person jury system in non-capital cases 121/

118/ FLA. STAT. ANN. §913.08 (1974). See also, Fla. R. Crim. Pr. 3.350 (West 1980).

119/ FLA. STA. ANN. §§40.01 (Supp. 1980).

120/ Janet Feagans Lancelot, Report on the Development of Political and Program Structure of Dade County, Florida (1980) (prepared for the U.S. Commission on Civil Rights) (hereafter cited as Political and Program Structure of Dade County, Sec. IV, p. 2.

121/ FLA. STAT. ANN. § 913.10 (1974).

make it relatively easy for either party to employ its peremptory challenges so as to select an all-white jury. 122/

The Governor's committee, aware that much of the public controversy surrounding the Johnny Jones case involved the exclusion of black jurors, said that the guilty verdict would have been far more acceptable to the community had a black juror been seated. 123/ The fact that the State Attorney's Office has used peremptory challenges to exclude black jurors has become, particularly since the Johnny Jones trial, a focal point of criticism in Dade County.

Harold Long testified that, in his experience as a private criminal defense attorney in Miami, he found that Assistant State Attorneys used their peremptory challenges to systematically exclude black jurors. 124/

Bennett Brummer, the Public Defender whose office defends a majority of the cases prosecuted in Dade County, also testified that Dade County prosecutors regularly exclude black jurors:

122/ Bennett Brummer, Public Defender, 11th Judicial Circuit of Florida, testimony, Hearing Transcript, p. 1441.

123/ Citizen's Committee Report, p. 45.

124/ Harold Long, testimony, Hearing Transcript, p. 1403.

> Counsel. In your experience does the State Attorney's Office systematically exclude blacks from juries in cases where blacks are defendants?
>
> Mr. Brummer. Yes.
>
> Counsel. Is it a policy that began with the present State Attorney or do you know whether it existed under her predecessor?
>
> Mr. Brummer. I am not really in a position to say. I have first become aware of it under the present administration. I am not in a position to say whether it precedes this administration. 125/

Mr. Brummer believed that black as well as white prosecutors engaged in such exclusions. 126/

The Supreme Court of the United States in Swain v. Alabama 127/ held that using peremptory challenges to exclude prospective black jurors in a particular case, is not, in and of itself, a violation of the equal protection clause of

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125/ Brummer Testimony, Hearing Transcript, p. 1437 .

126/ Ibid.

127/ 380 U.S. 202 (1965).

the 14th amendment. 128/ The Court added, however, that a record of continuing and systematic exclusion of black jurors could constitute such a violation. 129/ The defendant attempting to establish such systematic exclusion must meet virtually insurmountable standards of proof set by the Court. 130/ Recently, a number of State supreme courts have considered the use of racially motivated peremptory challenges

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128/ *Id.* at 221.

129/ "[W]hen the prosecutor in a county, in case after case, whatever the circumstance, whatever the crime and whoever the defendant or the victim may be, is responsible for the removal of Negroes who have been selected as qualified jurors by the jury commissioners and who have survived challenges for cause, with the result that no Negroes ever serve on petit juries, the Fourteenth Amendment claim takes on added significance." *Id.* at 223.

130/ *Id.* at 226-28. Courts have affixed themselves to the literal language of *Swain* to determine if there has been systemmatic exclusion. First, courts have required the defendants to prove that the state excluded blacks in case after case. United States v. Carter, 528 F.2d 844 (8th Cir. 1975), *cert. denied*, 425 U.S. 961 (1976). (Exclusion of black jurors in seven of fifteen cases insufficient). Second, courts have not distinguished the defendant's race in determining whether there was systemmatic exclusion. State v. Baker, 524 S.W. 2d 122 (Mo. 1975) (*en banc*) (no systematic exclusion when blacks are excluded only in cases with black defendants). Third, courts have required almost total exclusion of blacks. *Id.* Only one defendant on record has ever met this burden. State v. Brown, 371 So. 2d 751 (La. 1979).

in individual cases and have prohibited such practices, 131/ but the Florida Supreme Court has not yet addressed the issue. 132/

Mr. Long told the Commission that defense counsels have begun to combat such practices in Dade County by making the courts aware of the problem and by establishing the record to prove systematic exclusion:

> [O]ne of the primary [mechanisms] that we have attempted to utilize, [is that] even prior to the jury selection process, motions are filed in advance to prevent the State from systematically excluding black people from the jury in the jury selection process. Each time that the State peremptorily excuses a black person from the prospective jury panel, an objection must be

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131/ People v. Wheeler, 148 Cal. Rptr. 890, 583 P.2d 748 (1978); Commonwealth v. Soares, 387 N.E.2d 499 (Mass. 1979) (premised upon due process protections arising from their respective state constitutions).

132/ Two lower Florida state appellate courts have relied upon the systematic exclusion equal protection standards of Swain. See, State v. Simpson, 326 So.2d 54 (Fla. 4th Dist. Ct. App. 1976); Lyons v. State, 388 So. 2d 1094 (Fla. 5th Dist. Ct. App. 1980). But see, Cornett v. City of Miami, Civ. No. 79-453 (Fla. 11th Cir. Dec. 17, 1980) (order on motion for new trial) (exclusion of black jurors denied right to fair trial).

> lodged and you must state that the objection is based upon the systematic exclusion of an identifiable minority, most specifically a black person. 133/

The State Attorney denied that her office systematically excludes black jurors, but there has been no attempt to formulate a written office policy designed to prohibit systematic exclusion by Assistant State Attorneys.

> Ms. Reno. [The attorneys on my staff] have exercised peremptory challenges to exclude black jurors through the use of peremptory challenges but I know of no instance over which they have done it on the grounds of race. And I disapprove of that.
>
> Counsel. Have you been explicit in instructing them not to exclude jurors on the basis of race?
>
> Ms. Reno. Yes.
>
> Counsel. By written directive or by oral directive or what?
>
> Ms. Reno. By oral directive.
>
> Counsel. When would this be?

133/ Long Testimony, Hearing Transcript, pp. 1404-05.

> Ms. Reno. It was raised, I think, initially, after—probably in late April. 134/

In a sworn deposition, Assistant State Attorney George dePozsgay, Chief of the Organized Crime/Public Corruption Unit of the State Attorney's Office, testified that he knew of no office policy specifically to exclude or to include black jurors. 135/

In July 1980, in the criminal prosecution of another black public official, the judge, who ordinarily presides in a neighboring circuit, was critical of the prosecution's use of peremptory challenges to exclude black jurors. He specifically contrasted such prosecutorial practices with those which he was accustomed to experiencing in his own circuit. 136/

Neither criminal defense attorneys nor, more importantly, the community at large believe that the State Attorney's Office has an effective policy prohibiting racially motivated

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134/ Reno Testimony, Hearing Transcript, pp. 1418-19.

135/ State v. Jones, Cr. Case No. 80-3039 (Fla. 11th Cir.), deposition of George dePozsgay (Nov. 4, 1980), p. 14 (maintained in Commission files).

136/ Citizen's Committee Report, p. 61. The case involved the prosecution of Solomon Barnes, a school principal charged with misuse of public funds.

peremptory challenges. The perception endures that a dual system of justice operates in the county—one for whites and one for blacks.

Finding 7.4: The Miami Police Department and the Dade County Public Safety Department have failed to maintain effective systems for receiving, investigating, and determining the validity of complaints about police misbehavior and for imposing appropriate sanctions.

Miami is no different from many other American cities where the relationship between the police and minority communities is one of continuing conflict, despite efforts from both to resolve their problems. 137/ As the only visible representative of the predominantly white power structure, police officers are often the lightning rod for grievances unrelated to their performance. Yet precisely because of this constant abrasion, even the most trivial incident can develop into a major disorder. While law enforcement cannot alleviate tension by solving the problems of poverty and racism, the police can develop programs and policies to reduce the incidence of police misbehavior.

Under Dade County's metropolitan government, law enforcement services are provided by the 25 distinct

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137/ Otis Pitts, Executive Director, Belafonte-Tacolcy Center testimony, Hearing Transcript, p. 1238; Capt. Douglas Hughes, Commander PSD Central District, testimony, Ibid., p. 1218.

municipalities within their particular jurisdictions and by the county in the unincorporated areas. 138/ The largest force is the Dade County Public Safety Department (PSD), and the largest municipal department is the Miami Police Department (MPD). In addition to having different jurisdictions, MPD and PSD differ in a number of other important respects. In recent years MPD has been a leader in designing and promulgating important departmental policies on the use of deadly force 139/ and on the identification of officers who generate an excessive number of complaints. 140/

138/ Political and Program Structure Development of Dade County, Sec. III, pp. 28-29. Two small municipalities, Islandia and Pennsuco, do not have their own police forces.

139/ Both MPD and PSD have adopted departmental regulations governing the use of deadly force by officers that are more restrictive than Florida's "fleeing felon" statute. FLA. STAT. ANN. §776.05 (1981). The Miami Police Department's policy, which was implemented during the riots, allows the use of deadly force "only as a last resort when the officer has reasonable belief that deadly force action is required to (a) prevent death or substantial harm to the officer or another persons or (b) to prevent the escape of a fleeing felon who would pose a real threat of death or substantial harm to the community or police officers. Departmental Order 7, §13.0 (1980). The Public Safety Department's policy is less restrictive. Administrative Order No. 20-75 (1975) Director Jones testified that efforts are underway to make the two departments' policies identical. Jones testimony, Hearing Transcript, p. 1331.

140/ Harms Testimony, Hearing Transcript, pp. 1327, 1345-46; Jones Testimony, Ibid., pp. 1337-38; Michael Cosgrove, Asst. Chief Police, Miami Police Department, testimony, Ibid., pp. 1282-85.

The Commission reviewed evidence supporting complaints that police officers in both MPD and PSD often physically abuse and harass black citizens. 141/ A number of knowledgeable witnesses testified that complaints of police abuse and the level of police community tension in Dade County remain as high since the riots as it was before. 142/ The anger and frustration in Miami's black neighborhoods, particularly Liberty City and Overtown, have not abated. Consequently, police insensitivity or abuse of authority could again have devastating repercussions.

141/ Citizens' Committee Report, pp. 51-53, 57; NAACP Hearing on Police Brutality (Miami, Fla., Mar. 22, 1979); Florida Advisory Committee to the United States Commission on Civil Rights, Policed by the White Male Minority; A Study of Police--Community Relations in Miami and Dade County, Florida (1976); Metropolitan Dade County Community Relations Board, A Report on the Level of Community Trust in the Accountability of Law Enforcement in Dade County (March 1978); Metropolitan Dade County Community Relations Board, Alleged Police Misconduct: A Chronological Account of CRB's Role (February 1979); Board of County Commissioners, Dade County, Memorandum and Minutes of Special Meeting (Feb. 26, 1979); The Miami Herald, "Police Brutality: "The Violent Few," a five-part series, July 22-July 26, 1979; Perry Testimony, Hearing Transcript, pp. 1152-54; Brummer Testimony, Ibid., p. 1461. Mays Testimony, Ibid., p. 1460; Michael Ray Greenwood, testimony, Ibid., pp. 1523-24.

142/ Perry Testimony, Hearing Transcript, pp. 1154, 1188; Pitts Testimony, Ibid., pp. 1240-41; Willard Testimony, Ibid., p. 75; Simms Testimony, Ibid., p. 1175.

Broad administrative measures that could reduce friction between the police and the community include better training, directives for handling specific situations, redeployment of personnel, and sensitive community relations programs. 143/ By identifying and disciplining those officers who engage in misconduct, a police department earns the trust of the community it serves. 144/

Officer misconduct rarely occurs in the presence of police supervisors; thorough investigation of citizen complaints is often the only way a department will learn of officer abuse. Such complaints, however, will be forthcoming only when citizens believe that their complaints will receive a fair and thorough review. The Governor's committee, while commending most PSD and MPD officers as sincere and dedicated professionals, noted that the absence of a credible internal review of citizen complaints can itself justify and support claims of police brutality. 145/

143/ U.S., Commission on Civil Rights, Who is Guarding the Guardians? A Report on Police Practices (hereafter cited as Who is Guarding the Guardians?) (1981) pp. 23-93.

144/ Many of the PSD officers involved in the McDuffie beating had established histories of physical altercations with black arrestees and had been the focus of numerous complaints of brutality and misconduct. The Washington Post, Aug. 1, 1980, p. A21; The New York Times, July 29, 1980, p. A11.

145/ Citizens' Committee Report, pp. 52, 57.

In its recently released report on police practices this Commission noted that an effective internal complaint processing system is essential to ensure officer compliance with departmental directives and to establish police credibility with the public. 146/ Any such system consists of four separate stages: receiving and processing complaints; 147/ investigating alleged officer misconduct notifying the officer and complainant of the results of the investigation; determining whether the allegation has been sustained by the facts; and imposing fair, swift and certain sanctions in cases of proven officer misconduct. 148/

Because the internal investigations procedures in both the Miami Police Department and the Public Safety Department were demonstrably inadequate, 149/ both departments have

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146/ Who is Guarding the Guardians?, pp. 50-51.

147/ William Perry, President of the Greater Miami Branch of the National Association for the Advancement of Colored People, testified before the Commission that on two separate occasions he attempted to file complaints against officers of the Department of Public Safety. He was unsuccessful, despite having persisted for more than five hours on one occasion. Perry Testimony, Hearing Transcript, pp. 1155-56.

148/ Who is Guarding the Guardians? p. 35.

149/ Citizens' Committee Report, pp. 37, 57.

recently revised their complaint processing systems. 150/ In many respects, the newly designed systems are in accord with the recommendations made by the Commission in its national report. 151/ They have been in place too briefly, however, to evaluate their effectiveness.

Finding 7.5: Blacks are underrepresented throughout the criminal justice system in Dade County, particularly in supervisory positions.

The Miami Police Department presently is hiring under the terms of a consent decree resulting from employment discrimination litigation, 152/ as well as a specific city ordinance establishing minority hiring goals higher than those required under the consent decree. 153/ The Public Safety Department now has an affirmative action plan, which also has been incorporated into a consent decree to increase minority

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150/ Dade County Public Safety Department, Internal Review Section---Standard Operating Procedures, (Oct. 1, 1980); City of Miami Police Department, Internal Security Unit---Standard Operating Procedures, (June 17, 1980); Jones Testimony, Hearing Transcript, pp. 1332, 1346-47.

151/ Who is Guarding the Guardians?, pp. 156-60.

152/ United States v. Miami, C.A. No. 75-3096, CIV JE (D.S.D. Fla. March 29, 1977) (consent decree).

153/ Robert Krause, Director, Human Resources, City of Miami, Hearing Transcript, pp. 596, 599.

representation on its force, 154/ and the State Attorney's Office has actively begun to recruit black attorneys for staff positions. 155/ Nevertheless, each of these three agencies still has a work force that does not represent the racial makeup of the constituency it serves. Underemployment of black officers and attorneys is substantial, and blacks are underrepresented in both the Public Defenders Office and the judiciary.

Since 1974, the Miami Police Department has hired 467 new officers, 28.7 percent of whom are black, 156/ although blacks remain underrepresented. Blacks comprise 33 percent of the Miami population, but the Miami Police Department in 1980 had only one black major, two black lieutenants, and no black captains. 157/ In addition, only thirteen of the 124

154/ Progressive Officers Club v. Florida Dept. of Administration, C.A. No. 76-957 CIV JCP (D.S.D. Fla. Jan. 22, 1980) (stipulation of settlement); Sam Williams, Human Resources Coordinator, Dade County Department of Public Safety, testimony, Hearing Transcript, pp. 1254-55.

155/ Thomas Petersen, Chief Assistant State Attorney, testimony, Hearing Transcript, pp. 1339-1401.

156/ Cosgrove testimony, Ibid., p. 1251. MPD is presently augmenting its force and plans to have an additional 260 sworn personnel by November 1981.

157/ Chart Showing Employment Statistics of Police Officers of the Miami Police Department 1975-1980, prepared by the Miami Police Department (maintained in Commission files).

sergeants (approximately 10 percent) and 64 of the 446 police officers (14.3 percent) in the Department were black. 158/ Black officers are also underrepresented in MPD's specialized units. For instance, in October 1980, 113 officers were assigned to the criminal investigations and special investigations sections. Only ten, or 8.8 percent, of these officers were black. 159/ Also indicative of the lasting effects of prior discrimination is that 35.9 percent of black employees of the Miami police department in non-clerical positions earn less than $16,000 annually while only 3.7 percent of white non-clerical employees earn less than $16,000. 160/

158/ Ibid. But MPD reports that since November of 1980, the Department has made additional progress toward hiring and promoting black law enforcement officers. According to MPD, as of March of 1981, the Department has one black deputy chief, one black major, one black lieutenant, sixteen black sergeants and 110 black police officers. Kenneth I. Harms, Chief of Police, Comments on the Draft Miami Report Prepared by the Commission on Civil Rights, Apr. 26, 1982 (maintained in Commission files).

159/ Chart Showing Police Personnel by Organizational Assignment, July 1980, prepared by the Miami Police Department (maintained in Commission files).

160/ Equal Employment Opportunity Commission, State and Local Government Information for the City of Miami, Police Protection, (EEO-4) (1980).

The Public Safety Department, which adopted its present affirmative action plan in 1980, 161/ also fails to reflect the community it serves. Only 122, or slightly over 8 percent, of PSD's 1,466 sworn personnel are black, 162/ although 15 percent of Dade County's residents are black. The absence of black officers in supervisory positions is even greater; PSD has only one black division chief, one black lieutenant, and no black captains. 163/ Fewer than 4 percent of all officers holding the rank of sergeant in the Public Safety Department are black. 164/

Dade County State Attorney's Office employs 117 attorneys, only 8 of whom are black and none of whom has any supervisory responsibility. 165/ Similarly, approximately 8 percent of the attorneys in the Public Defender's Office are black, including one of the eight surpervising attorneys. 166/

161/ Williams Testimony, Hearing Transcript, pp. 1254-55. That plan requires that one-third of all new hires be black, one-third Latin and one-third white.

162/ Ibid., p. 1253.

163/ Rick Holton, President, Progressive Officers Club, Metro-Dade Public Safety Department, interview in Miami, Fla., Sept. 11, 1980.

164/ Williams Testimony, Hearing Transcript, pp. 1269.

165/ Petersen Testimony, Hearing Transcript, pp. 1398-1400.

166/ Brummer Testimony, Hearing Transcript, p. 1436.

In Dade County, an essentially white system administers justice to a defendant and victim population that is largely black. The lack of minorities throughout the criminal justice system maintains the perception of a dual system of justice.

Finding 7.6: The Dade County Public Safety Department recently modified its hiring process to include psychological screening of applicants. This screening, which consists of tests known to be culturally biased, disqualifies black applicants at a significantly higher rate than that of white applicants.

In its national study of police practices, this Commission recommended that law enforcement agencies include, as an integral part of the selection process, psychological screening of all applicants for employment. 167/

In January 1980, the Dade County Board of Commissioners adopted an ordinance requiring psychological testing for all job applicants at the Public Safety Department. 168/ A list of behavioral characteristics that department officials thought should be tested included evidence of psychosis, character disorders, neurosis, mood disorders, poor impulse control, a need for very high levels of excitement, a tendency to be very passive or aggressive under stress, and strong racial,

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167/ Who is Guarding the Guardians? (1981), Recommendation 2.4, p. 155.

168/ Dade County, Fla., Ordinance Requiring Adoption of Program for Psychological Testing of Police Officers (Jan. 8, 1980).

religious or ethnic prejudices. 169/ Two independent psychologists, highly regarded for their work in stress management, subsequently developed tests to identify these traits. 170/

During the interim, PSD had hired a new class of recruits, who were receiving classroom training in the academy. Under the terms of the ordinance, the recruits had to pass the psychological tests to be accepted permanently on the force. The screening process, however, excluded 33 percent of the black male candidates and only 17 percent of the white male candidates. 171/

Dr. Larry Capp, a clinical psychologist and president of the South Florida Association of Black Psychologists, testified that the tests were inappropriate because they were culturally biased and included experimental components that had not been validated through research. 172/

169/ Dade County Board of Commissioners, Ordinance No. 80-5 (Jan. 1, 1980). Fred Taylor, chief administrative division, Dade County Department of Public Safety, testimony, Hearing Transcript, p. 1299.

170/ Mr. John A. Sample, Director, Professional Development Specialists, Inc., interview in Miami, Fla., Oct. 17, 1980.

171/ Larry Capp, director, Center for Family and Child Enrichment, testimony, Hearing Transcript, p. 1302.

172/ Ibid., pp. 1301, 1316.

> I have some very serious concerns about the battery of tests that are used. The research literature surrounding some of those tests indicates they might not be appropriate for some ethnic groups....One of the major tests an extremely old test, a test that is 40 years old, is a test that has a very controversial history in the research literature. There are some who say the test should not be used for blacks because there are certain scales...where blacks historically and traditionally score much higher than whites. They score into ranges that are considered pathological, and unless there is some sensitivity to that kind of issue, then you are going to have more blacks excluded because of the bias of the instrument. 173/

The Association of Black Psychologists was excluded from participating in all stages of the development of the tests including the original development of the bid specifications,

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173/ Ibid., pp. 1301, 1315-16.

the review of the various bids that were submitted, and the selection of the group of psychologists to administer the test. 174/

A recent grant from the Law Enforcement Assistance Administration of the U.S. Justice Department allows the Southeast Florida Institute of Criminal Justice to establish a model assessment center in Dade County to screen applicants for both the Miami and Dade County police forces. The $220,000 project includes extensive analysis of police functions, role-playing and simulation exercises, and the training and supervision of assessors. 175/

Finding 7.7: The Dade County Public Safety Department and the Dade County government have not effectively used the citizen advisory committees in each of the PSD's six districts.

The Commission on Civil Rights has noted the inherent difficulties of nonexpert citizen panels reviewing police policy and procedure. 176/ Metropolitan police forces are paramilitary organizations engaged in specialized tasks that

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174/ Ibid., p. 1303.

175/ Howard Rasmussen, Director, Division of Public Service Southeast Florida Institute of Criminal Justice, testimony, Hearing Transcript, p. 1318.

176/ *Who is Guarding the Guardians?*, pp. 124-27.

few lay citizens understand. Consequently, such committees are usually no more expert or influential in shaping police policy than are any other group of concerned private citizens.

In July 1979, attempting to improve relations between the police and the community, the county manager established citizen advisory committees in each of the six Public Safety Department districts in Dade County. The county manager appoints the members of these committees, who meet regularly with PSD personnel from their districts to discuss community concerns. 177/

George Kilpatrick, chairman of the citizens advisory committee for the Department of Public Safety's Central District, which includes most of the unincorporated area of Model Cities, succinctly summed up the committee's role:

> The only thing we do, we discuss whatever the issues are, and we send it in the records to the county manager. We have no power. 178/

Not only do the advisory committees have no power, but they also must rely on the individual district commanders to volunteer information about police policy because the

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177/ George W. Kilpatrick, President, Public Safety Department Central District Citizens Advisory Committee, testimony, Hearing Transcript, p. 1209.

178/ Kilpatrick Testimony, Hearing Transcript, pp. 1209-10.

department does not require the commanders to provide any specific information to their advisory committees. PSD policies are written and codified, yet the advisory committees do not have copies of these regulations. 179/ While the advisory committees have proved a useful forum for police-community discussion, 180/ lack of information unnecessarily limits their potential influence on departmental policy. Even when the Central District advisory committee has considered issues and made recommendations, it has gotten no response from the county officials.

> Commissioner Saltzman. Has your committee made recommendations that have brought about any changes?
>
> Mr. Kilpatrick. We advise the county management of what has happened at every meeting. We take minutes of what is happening; whatever we discussed, what we vote on, we send to county management. So far, we haven't had any feedback from county management.

179/ Minutes of the Central District Advisory Committee, September 1979-October 1980 (maintained in Commission files).

180/ Captain Douglas Hughes, district commander, Public Safety Department, testimony, Hearing Transcript, pp. 1221-24.

> Commissioner Saltzman. There has been no response to any of the recommendatic ?
>
> Mr. Kilpatrick. None whatsoever from the county manager, not to the committee....I feel if the county manager would give me some feedback as to what direction we should take once we feed him the information, I would feel then we would be empowered to give him--whoever is in charge--some direction. 181/

Finding 7.8: Training for officer candidates and officers is inadequate.

Although each of the 25 police departments in Dade County can and sometimes do provide training for their own officers and recruits regarding particular departmental policy, 182/ the Southeast Florida Institute of Criminal Justice (ICJ) conducts much of the training. Although ICJ provides a basic law enforcement program that exceeds the minimum standards

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181/ Kilpatrick Testimony, Hearing Transcript, pp. 1241-42.

182/ Rasmussen Testimony, Hearing Transcript, p. 1320. ICJ is a consortium of the participating departments and Miami-Dade Community College. Memorandum of Understanding As to the Role and Functions of the Criminal Justice Advisory Council, (July 22, 1974) (maintained in Commission files); Rasmussen Testimony, Hearing Transcript, p. 1304.

established by the Florida Police Standards and Training Commission, according to its director, the program does not have sufficient time to adequately prepare and train police officers and recruits. 183/

One of the most pressing problems at ICJ is the lack of full-time faculty, which affects curriculum continuity and quality control. 184/ Although since the Commission hearing in December 1980 two full-time faculty positions were established to teach the law and human skills blocks of the curriculum, 185/ most instructors are active duty police officers who are compensated for actual classroom time only. Consequently, those instructors who plan and prepare lesson plans and counsel individual students do so strictly because of their own demands for professionalism. 186/ In an effort to correct this situation, since the summer of 1981 ICJ has

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183/ Rasmussen Testimony, Hearing Transcript, p. 1321.

184/ Howard Rasmussen, interview in Miami, Fla., Oct. 15, 1980.

185/ James D. Stinchcomb, Director, Southeast Florida Institute of Criminal Justice, letter to Paul Alexander, Mar. 31, 1982 (hereafter cited as Stinchcomb letter).

186/ Sheila Foster, program coordinator, Southeast Florida Institute of Criminal Justice, interview in Miami, Fla., Oct. 17, 1980.

hired a full-time college curriculum development specialist who shares the responsibility of preparing lesson plans and course designs. 187/

As with most police training programs, 188/ ICJ emphasizes training related to law enforcement, although police officers spend considerably more time on social service functions than they do pursuing and apprehending criminals. 189/ The ICJ curriculum consists of 840 hours of instruction over a 20-week period:

Administration (testing etc.)	100 hours
Introduction to Criminal Justice	25 hours
Basic Law & Legal Procedures	80 hours
Crime Investigation	106 hours
Patrol Procedures	174 hours
Traffic Control	54 hours
Human Skills	105 hours
Proficiency Skills (Arrest techniques & firearms training, etc.)	196 hours 190/

Howard Rasmussen, former director of ICJ, believes that the program's Human Skills component should be expanded. 191/

187/ Stinchcomb letter.

188/ Who is Guarding the Guardians? pp. 24-28.

189/ Herman Goldstein, Policing a Free Society (Cambridge, Mass.: Ballinger, 1977), pp. 24-25.

190/ Southeast Florida Institute of Criminal Justice, Basic Law Enforcement Curriculum (maintained in Commission files).

191/ Rasmussen Testimony, Hearing Transcript, p. 1321.

ICJ reviewed its basic law enforcement program in 1980 and found that in the area of Human Skills qualified instructors were difficult to find, and that those who were chosen did not understand the program's philosophy and objectives. 192/ Captain Douglas Hughes, Commander of PSD's Central District, which includes most of Model Cities, testified that a more experiential and self-evaluative training program would be preferable:

> Captain Hughes. What we wind up with is middle class white police officers who come from suburbia, and they enter a minority community, and have a cultural shock. That is not their world....
>
> We don't have what the psychologists and counselors call "processing." We have a system where we will take people and expose them to a drug center, say, "That is a drug center," but, then, we don't sit down for hours and say, "What was your reaction to that?" "Why did you feel that that affected you?" "What are your assumptions, based on

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192/ BLE Curriculum Review Task Force Report (1980), p. 4 (maintained in Commission files).

how people should live and how they live in
a drug center." 193/

Finding 7.9: Although Dade County Independent Review Panel is authorized to investigate complaints of misconduct against officers of the Department of Public Safety, the panel lacks the needed investigative resources and subpena power.

In its report on national police practices, the Commission summarized the history of independent external review of alleged officer misconduct, noting that many attempts to establish civilian review of police departments have failed. 194/ Citizen advisory bodies do not usually have the authority to decide cases or impose punishment, and they often have insufficient staff and inadequate resources to conduct a thorough investigation, criteria crucial to success. 195/

In February 1980, before the riots, Dade County established an independent review panel (IRP) to investigate serious complaints against any "employee, agency or instrumentality" of Dade County and to make recommendations. 196/

193/ Hughes Testimony, Hearing Transcript, p. 1220.

194/ *Who is Guarding the Guardians?* pp. 124-27.

195/ Ibid.

196/ Dade County Board of Commissioners Ordinance No. 80-8, §3 (Feb. 5, 1980) (maintained in Commission files); Jeffrey L. Berkowitz, executive secretary, Dade County Independent Review Panel, testimony, Hearing Transcript, pp. 1349-50.

The IRP has authority to investigate complaints against all Dade County employees and departments, including officers in the Dade County Public Safety Department, but not against members of the Miami Police Department or any other municipal department. A review of the complaints the panel received in the first 8 months of its existence reveals its jurisdictional problems. Of the first 49 complaints received, 9 were against police officers from municipal departments over which the IRP has no jurisdiction, and 19 were against non-police county agencies within the panel's jurisdiction. 197/ Although the panel's expanded jurisdiction apparently is fulfilling a real need, acting as countywide ombudsman limits the panel's

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197/ Independent Review Panel Complaint Summary (Nov. 25, 1980) (maintained in Commission files). The non-police county agencies included the Dade County Animal Service, the Property Appraiser's Office, the Corrections Department, the County Commissioners, the Aviation Department, the County Clerk's Office, the Architectural Inspection Division, Jackson Memorial Hospital, the Summer Youth Employment Program, and the Department of Traffic and Transportation, and the Office of Transportation Administration.

Of the complaints received by IRP to date, 18% involved various municipal police departments and Florida law enforcement agencies over which IRP has no jurisdiction. See Jeffrey L. Berkowitz, Executive Director, Dade County Independent Review Panel, letter to Paul Alexander, Apr. 13, 1982 (hereafter cited as Berkowitz letter), Appendix C, p. 2.

ability to develop the specific expertise for conducting independent reviews of alleged police misconduct. 198/

Since its inception, the panel members, particularly its executive secretary, have strived to be independent and to investigate citizen complaints objectively. 199/ The panel has issued a set of rules governing its proceedings, has attempted to publicize its existence, and has received and processed complaints expeditiously. 200/ Nevertheless, the absence of important legal and personnel resources severely hampers the panel and limits its support in Miami's black community. 201/

There are six permanent members of the panel and three temporary members, who participate whenever four of the permanent members determine that a complaint is serious enough

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198/ But see Berkowitz letter, Appendix C, p. 2, noting that the present IRP includes the president of the Dade County Association of Chiefs of Police and a prominent criminal defense counsel who was previously chief trial counsel for the U.S. Attorney's Office.

199/ Berkowitz Testimony, Hearing Transcript, pp. 1349, 1351-52, 1357.

200/ Metropolitan Dade County Independent Review Panel, Rules of Procedure (June 10, 1980) (maintained in Commission files); Berkowitz Testimony, Hearing Transcript, pp. 1383-84; Independent Review Panel Complaint Summary (November 25, 1980) (maintained in Commission files).

201/ William Perry, President, Greater Miami NAACP, testimony, Hearing Transcript, pp. 1156-57.

to merit review by the full panel. 202/ The county commissioners appoint five of the permanent panelists, and the county manager appoints the sixth. 203/ When the panel expands for a full investigation, the county commissioners appoint three temporary panelists, two of whom must be "representative of the pertinent geographical area and ethnic group most closely associated with the complaint." 204/ The third is selected from a list of three nominees submitted either by the bargaining unit that represents the alleged wrongdoer or, if no bargaining unit is involved, from a list of three nominees submitted by the Management Association Council. 205/ The Chief Judge of the Eleventh Judicial Circuit (Dade County) appoints an executive secretary who manages the daily

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202/ Dade County Board of Commissioners Ordinance No. 80-8 (Feb. 5, 1980) (maintained in Commission files); Berkowitz Testimony, Hearing Transcript, pp. 1351, 1352.

203/ Ordinance No. 80-8, §4. Each of the five panelists selected by the County Commission is originally nominated along with two other nominees from the following organizations: (a) the Dade County Community Relations Board, (b) the Dade County Community Action Agency, (c) the Dade County League of Women Voters, (d) the Dade County Bar Association and (e) the Dade County Police Chiefs' Association. Id., §4(1).

204/ Id., §4(4).

205/ Id.

operations of the panel and conducts investigations. 206/ Other county agencies provide clerical assistance and legal counsel, but the panel must request investigative and research staff from the county manager, who does not have to provide such support. 207/

Jeffrey Berkowitz, IRP executive secretary, testified before the Commission on the panel's need to increase its staff:

> [We] are in the process of trying to hire an administrative assistant. We have been advertising....When I found out that the advertisement had not been placed in the black or Latin newspapers, I asked that the deadline be extended so that we could advertise the position in those papers.... Obviously, I would like to see more staff. I was given this job on a part-time basis where I was going to be paid for 6 1/2

206/ *Id*., §10(2).

207/ *Id*., §10.

> hours a week. The job is taking in excess of 20 to 30 hours a week. 208/

The panel has also had to rely upon outside legal counsel. More significantly, the IRP has neither the authority to subpena witnesses or documents for its investigations nor the authority to impose penalities, should the panel determine that an officer acted improperly.

Mr. Berkowitz also testified that the IRP needs subpena powers. Because he assumed that the Public Safety Department would cooperate and administratively compel officers to appear before the panel at its request, he initially did not believe that such authority was necessary. PSD's refusal to cooperate, however, changed his mind:

> With respect to subpena power, it has always been my position...that it was not necessary....I have always assumed that I would have the full cooperation of the various county agencies in forcing their officers or directing their officers or employees to appear before us.

208/ Berkowitz Testimony, Hearing Transcript, pp. 1350, 1357. But see Berkowitz letter, Appendix C, p. 3, noting that shortly after his appearance in the Commission hearing, a full-time administrative assistant was hired by IRP.

> We had a meeting, [Public Safety Department] Director Jones and I, this week. I was informed that the Public Safety Department was going to take the position that they would not compel an accused employee to testify before the panel...That statement and that position has forced me to reassess my position and I think that I am left with basically no alternative if external independent review is going to work in this county but to ask for subpena powers. 209/

Irwin J. Block, chairman of the Governor's Dade County Citizens' Committee that investigated the underlying causes of the May 1980 riots, testified before the Commission:

> The Independent Review Board should, in our opinion, have its own staff, should have subpena power, should have its own investigators, and they do not have that at

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209/ Ibid., pp. 1358-59. But see Berkowitz letter, Appendix C, p. 4, stating that "the legal and political implications inherent in the efforts to obtain subpoena power would be counter-productive to the police department's efforts to improve its own image and might serve to diminish the respect of the community which the department has been striving hard to regain.

> this time. We feel that until they have that they are not going to be able to function as well as they should....[Y]ou are going to find that voluntary appearances and cooperation are going to gradually disappear. 210/

Dade County's criminal justice system has been a continual source of abrasion to the black community. A series of incidents involving misconduct and unequal treatment contributed to the May 1980 civil disturbances by underscoring the larger pattern of discrimination and exclusion. Distrust of the criminal justice system is fostered by a widespread perception that blacks are excluded from the ranks of judges, jurors, prosecutors, supervisory policy officers, and other decisionmakers. Without effective mechanisms for resolving allegations of police misconduct and for reducing friction between the black community and the criminal justice system, distrust and the potential for violent confrontation will remain.

210/ Irwin Block, testimony, Hearing Transcript, p. 1161.

CHAPTER VIII — SUMMARY AND RECOMMENDATIONS

A. SUMMARY

The black community in Miami is characterized chiefly by its isolation from the city as a whole. Blacks are in the city, but in a crucial sense, they are not part of Miami. They are not in the politically and economically powerful sectors that control community resources and make community policies. Their concerns have not been a priority for the city, the county, or for the private sector. Their frustration fed the violence that recently erupted in the wake of what was viewed as yet another in a long line of abuses suffered at the hands of an unresponsive and uncaring officialdom.

The isolation of Miami's black community results from a series of events that have contributed to the deterioration of what was once a vibrant and viable community. What Miami needs is a recognition of the causes for the alienation that has overtaken the black community and a commitment by responsible leaders at all levels in both the public and private sectors to provide the leadership and resources and exert the effort to turn this situation around.

One of the events that precipitated the isolation was the physical destruction of a large portion of the black community by the municipal government. Under the urban renewal program, the city tore down a massive amount of low-cost housing, forcing large numbers of blacks to leave their traditional neighborhoods and move into other areas that could not accommodate them. New units of low-cost housing were never built to replace all that had been demolished. In a city with a vacancy rate of less than one percent, the remaining low-cost housing has become severely deteriorated and overcrowded. The consequences are isolated and desparate ghettoes.

Neither the children who are transported to schools outside of these communities nor those who remain in neighborhood schools receive, in many respects, an education that addresses their needs. The city has not allocated enough resources and effort to provide adequate vocational-technical programs and well-trained guidance counselors or to address the myriad other needs of students from low-income families. When children exhibit inappropriate behavior, Dade County's school system often responds by shunting them into programs that do not respond to their needs rather than intervening with effective counseling. The public school system has many capable black employees, but they are concentrated in the elementary schools and low-level administrative posts. This practice not only undermines these employees' upward mobility but also deprives young blacks of positive role models, compounding the youths' sense of isolation within the schools.

Blacks are isolated in Miami's economy, as well. Although the local economy continues to grow at a rate higher than that for the Nation as a whole, there are few black entrepreneurs, and the black unemployment rate remains high. Stymied by their own lack of capital and their inability to obtain capital from commercial lenders, would-be black businesspeople fall through the cracks of unimaginative and nonaccommodating programs of the State, local and Federal government. Blacks with the education and talent to succeed in business often leave Miami for other parts of the country that appear to offer more opportunities for blacks. Those who remain and try to establish businesses in Miami run into many obstacles, such as insurance redlining, that increase the likelihood of failure.

Federal programs established to help the disadvantaged businessperson, including the Small Business Administration, have helped some persons. The fact remains, however, that in Miami, black entrepreneurs are receiving a disproportionately small number of the loans the Small Business Administration provides for disadvantaged businesspersons. Witnesses before this Commission questioned the degree to which other federally-funded economic development programs are benefitting blacks. Although it is clear programs like urban redevelopment are providing some assistance to some disadvantaged persons, federally-funded programs in Miami have not improved the quality of life within the black community as much as anticipated. Blacks continue to be largely excluded from many economic opportunities in Miami.

Blacks in Miami have limited employment opportunities. A few Federal agencies, such as the U.S. Postal Service and the Veterans Administration Medical Center, have significant numbers of black employees. But most Federal agencies in the city employ few blacks. Local public and private sector employers have a dismal record with regard to hiring blacks. Some employers go so far as to recruit workers from other States rather than provide on-the-job training to unskilled workers in Miami.

Compounding this situation is the fact that justice in Miami is administered in a way that excludes blacks and appears incapable of condemning official violence against them. Black complaints of police violence are common in the city. The incident that took the life of Mr. McDuffie was one of many confrontations between black residents and the system that is supposed to protect all of Miami's inhabitants. The underlying causes range from employment practices to inadequate police training and evaluation. The department screens applicants for the police force with an allegedly biased test. Dade County has established an Independent Review Panel to investigate complaints against the police, but the Panel lacks resources and has no subpena power. A Governor's Commission found that local police internal review procedures were totally unsatisfactory.

The proportion of the youth in the Miami juvenile justice system who are black is more than three times as great as in the Dade County population. Counseling for such youth is inadequate, in part, because the system employs counselors who meet minimal educational and experience requirements. Services for rehabilitating juveniles are grossly inadequate.

Many of Miami's problems have answers—more and better-qualified teachers and counselors, better selection and training of police officers, rehabilitation of housing, and so on. But remedial steps cost money. The housing situation is a good example of the cost-benefit approach that appears to have taken hold in Miami. Because it is a seller's market, landlords can rent or sell any housing they choose to make available, no matter how deteriorated. As a result, they do not appear to view rehabilitating housing as being to their advantage. In the rare instances when they are brought before municipal authorities for violation of housing ordinances, landlords generally find it cheaper to pay the fine than to make the repairs. The question is whether one approach is indeed "cheaper" than another when the trade-off involves human suffering and frustration.

As indicated throughout the report, Miami suffers the range of urban problems that seem endemic to all major American cities today. The vast majority of the black community, regardless of economic status, feels powerless and frustrated. It is possible to identify and perhaps to ameliorate some of the sources of tension, but any long-term solution requires a coordinated attack on the underlying causes of racial isolation and exclusion.

Other reports, including those by the Kerner Commission and by this Commission, have indicated many specific remedial steps that officials at each level of government could take in areas such as education, employment and housing. To the extent that Miami has implemented any of these recommendations, however, it has not been a comprehensive effort. Consequently, racial isolation and exclusion have intensified.

A major question facing Miami is whether local leaders will see it in their community's interest to take the coordinated long-term concrete action that is necessary to turn Miami around. Other riots have occurred without generating such a commitment.

Many black Miamians are contributing to the progress of their communities and the city as a whole. Black support for a rapid transit system in a 1978 referendum made the project possible. The black Miami-Dade Chamber of Commerce, albeit with limited success, has coordinated efforts with the Greater Miami Chamber of Commerce in two projects designed to increase the number of black businesses in Dade County. But the black community in Miami has neither the size nor wealth that commands political power and accountability in Miami. Acting alone, it cannot control or improve the circumstances in which they live.

It is important to identify sectors of the community that have both the political influence and economic capacity to address problems of such magnitude. According to Miami's Mayor, the city suffers a power vacuum:

> Nobody runs Miami....[T]here is no automobile industry; there is no steel industry; there is no tobacco industry; there is no company that permeates, that dominates. So we don't really have the typical power structure that you have in some American cities. In addition to which, unlike Atlanta and other cities that have deep roots, you don't have a social structure. Nobody has really been here for

> more than 50 years....[E]verybody here came from somewhere else. Very few native Miamians are more than 30 years old....Then who are the wealthy people? Who are the money interests here? For the most part, absentee corporations where the management is in New York. So, therefore, when you get to the Chamber of Commerce, what you see, with all due respect, are a bunch of lawyers that represent interests and corporations. They do a nice job, but this is not Atlanta...[where] you can get together a dozen people and something will happen. That cannot happen in Miami. 1/

Miami may not have the same power structure as some other American cities, but there is leadership in both the private and public sector that can get things done. Private sector involvement will be crucial to any successful remedial effort and is becoming increasingly important as Federal financial aid to cities is being cut back. The idea of organized private

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1/ Maurice Ferre, testimony, Hearing Transcript, pp. 1139-42.

sector involvement is not new. "Metropolitan affairs non-profit corporations" (MANCs) and "community" foundations have improved the quality of urban life in a number of cities, including Detroit, Philadelphia, Pittsburgh, and Atlanta. These organizations, however, tend to limit their activities or developing downtown areas to sponsoring cultural affairs.

In Miami, one project that reflects private sector leadership is the New World Center development. Working with community groups to rejuvenate the downtown area, the private sector put together a commercial package supplemented by Federal monies. Although this project emphasized physical construction, the elements of commitment, coordination, and monitoring are apparent.

The same groups, individuals, and units of government that worked together to rebuild downtown Miami can—if they want to—work together with the black community to bring about that community's participation in all aspects of growth and progress in Dade County. The knowledge and skills are available; the question is one of commitment. This report unmistakably demonstrates that without such a commitment, conditions will worsen, isolation will increase and violence will recur.

B. RECOMMENDATIONS

Recommendation 1.1: The public and private sectors of the Miami-Dade community should work together to develop a long-term coordinated attack on the underlying causes of racial isolation and exclusion.

What is needed is a coordination entity that comprises both the public and private sectors and has the support of the establishment, the minority communities, and all relevant government units. Although government support is crucial, the coordinating group should operate outside the government structure and not rely on public funds for existence. The commitment of the private sector will be a determinative factor in the success of the coordinating body. In order to be effective, the group must include representatives of the area's largest employers; the banking industry (commercial and savings and loan); the public education system (both Dade County public schools and Miami Dade Community College); and leading members of the black and Hispanic communities. These representatives should be from the highest levels of their organizations.

EDUCATION:

Recommendation 2.1: Dade County Public Schools should make substantial efforts to identify potential dropouts and provide support systems to encourage students to remain in school.

Potential dropouts should be identified early. Although guidance counseling is the usual method for doing so, DCPS has far too few counselors to work effectively with students. More counselors are needed in the elementary grades to encourage students to continue in school. Secondary level counselors should have smaller caseloads that permit more intensive counseling.

DCPS currently provides such counseling through its Bilingual Alternative for Secondary Education Guidance Program (BASE), which is an option within the discretion of each school principal. The program should be mandatory and should be considered for the elementary schools since the results at the secondary level have been encouraging.

Although budgetary concerns may prevent the hiring of additional counselors, DCPS could train its teachers to provide guidance counseling within their classrooms.

Recommendation 2.2: School attendance boundaries should permit maximum desegregation of Dade County Public Schools.

In the past, attendance boundaries have been drawn so that very few white students have to be bused to inner-city schools. Black students, however, often must travel substantial distances to attend school. Rezoning school boundaries would accomplish more racially diverse school populations, particularly in the inner city. This would also alleviate much of the present underutilization of some inner-city schools.

Future rezoning should be long-range, taking into consideration Dade County growth patterns. It should respond to the needs of the school system rather than to the interests of white parents who do not make school desegregation a priority.

Recommendation 2.3: Dade County Public Schools should seek to modify the original court-ordered school desegregation plan so as to take Hispanic students into account.

Although the Bi-racial Committee that monitors implementation of the DCPS desegregation plan was adjusted to reflect the growing number of Hispanic students, the plan itself does not provide separate requirements for integrating Hispanics into the entire school system. DCPS should ensure that Dade County schools are as reflective as is reasonably feasible of the ethnic diversity of the community. This would prevent the continued existence of one-race schools and schools whose enrollments are entirely black and Hispanic, obviating the need to bus non-Hispanic white students to predominantly black schools and vice versa.

Recommendation 2.4: Dade County Public Schools should create a consortium of inner-city high schools to provide improved vocational facilities.

Vocational training facilities in suburban white schools are generally superior to those of the inner-city schools. As a result, black students often are trained on outdated equipment that may not provide them with relevant job skills. A consortium of inner-city schools would permit a pooling of resources, thereby increasing the availability of modern vocational equipment and up-to-date training, which would improve the employment potential of black students.

Recommendation 2.5: The Miami-Dade County business community and Dade County Public Schools should develop mechanisms for improved communication to ensure that vocational training will meet the needs of students and employers.

Although there is some communication as to the vocational needs of the business community and the DCPS's ability to meet these needs, the dialogue is insufficient. Not only should the school system provide students with rudimentary skills, but it also should provide them with vocational skills relevant to the local employment market. The business sector should make DCPS aware of employment trends and needs. If the schools themselves are unable to provide certain types of training, they should work out arrangements with potential employers to provide the training. This is particularly true in the unionized trades, which offer the potential for better paying jobs.

DCPS should attempt to counsel minority students better and to recommend programs that enhance employability, including vocational programs where appropriate. DCPS and the business community could encourage black participation through more individualized vocational training, such as having a skilled worker train a small number of minority students. Only with well-developed skills that are needed in the Miami-Dade County area, are black students likely to find viable employment and job security.

Recommendation 2.6: Because of the multi-cultural, bilingual nature of the Miami-Dade County area, Dade County Public Schools should encourage native English-speaking students to learn functional Spanish as an employment skill.

The increasing Hispanic population of Miami-Dade County has created a corresponding need for black students to be bilingual. Because many potential employers are Hispanic, conversational ability in Spanish can be an advantage in seeking employment. Although the DCPS has indicated a commitment to making all students bilingual, few black students learn Spanish. Spanish courses should not only be required, but should be geared toward teaching the students functional use of the language. Bilingualism would enhance employment potential and increase cultural awareness in Miami-Dade County.

HOUSING:

Recommendation 3.1: Dade County and the City of Miami should try to attract developers and builders of low income housing.

Because the vacancy rate in Miami-Dade County is extremely low, many black families have no choice but to remain in poor and substandard housing. The city and county should provide funds to encourage private development and should explore new and creative methods to provide additional housing for low-income black families.

Recommendation 3.2: To upgrade existing low-income housing, the State Attorney's Office should enforce minimum housing standards vigorously.

A civil suit is the most effective means of forcing a landlord to comply with the housing code. Because the remedy in a civil action is applicable to all successors, agents, assignees, and lessees, the landlord is unlikely to sell or abandon the property without making court-ordered repairs. The civil suit, however, is only effective if the State Attorney's Office (SAO) enforces it. The SAO, which currently has only one full-time attorney handling such matters, should assign additional staff in order to effect more widespread and lasting code enforcement and to improve housing conditions for low-income families.

ECONOMIC DEVELOPMENT:

Recommendation 4.1: The financial industry and the Federal government should jointly develop a risk capital program to help blacks start small businesses.

Continuing discrimination and the legacy of past discrimination in education, employment, credit, and housing make it particularly difficult for blacks to acquire risk capital which is crucial for private sector business development in black communities.

Recommendation 4.2: Congress should enact tax incentives that encourage businesses to develop minority training and management programs to bring minorities into the mainstream of corporate experience.

In addition to enhancing minority prospects within existing corporations, such programs would give minorities requisite management opportunities to strengthen their chances for business loans. The programs should include entry and lateral levels of participation.

Recommendation 4.3: Congress should strengthen the Community Reinvestment Act, and the executive branch should increase its enforcement efforts to combat financial redlining of minority neighborhoods.

Financial redlining often causes money generated in minority neighborhoods to flow out of the community rather than remain in those neighborhoods to be continually reinvested in business activity and jobs. The Community Reinvestment Act and Federal enforcement efforts need to be strengthened to address this problem.

Recommendation 4.4: The Federal Reserve Board, the Office of the Comptroller of the Currency, and the Federal Home Loan Bank Board should Review Dade County financial institutions for compliance with the Community Reinvestment Act. These agencies, as well as the Federal Deposit Insurance Corporation, should conduct similar reviews for compliance with the Equal Credit Opportunity Act and all other provisions of Federal law prohibiting discrimination in the extension of credit for which they have administrative responsibility.

Neither business nor personal investment is possible without access to credit. Credit discrimination strangles the chance for growth and prosperity in minority communities, making futile other efforts at economic development. It is imperative, therefore, that financial institutions comply with laws forbidding such discrimination.

Recommendation 4.5: District offices of the Small Business Administration should develop a county by county statistical system to monitor participation by blacks and other minorities in SBA loan and training programs.

The system should elicit data on the number and percentage of SBA program participants who are black. Without meaningful data, the adequacy of SBA programs cannot be assessed nor problems corrected.

Recommendation 4.6: To enhance the flow of credit to low-income and, particularly, black communities in Miami, the Small Business Administration should conduct a study of the criteria financial institutions use to extend financial credit.

SBA should also consider experimental or pilot projects using different financial criteria or interpretations of financial criteria within prudent limits of risk to enhance lending to low-income and, particularly, black communities.

Recommendation 4.7: Congress should amend the Small Business Act to require that appropriate financial institutions subject to Federal regulation participate in the SBA guaranteed loan program and make a certain percentage of their loans through that program.

The SBA guaranteed loan program accounts for 90% of SBA's financial assistance to small business, but low participation by banks appears to prevent this program from achieving its potential for breaking the credit squeeze on minority business.

Recommendation 4.8: Congress should provide additional appropriations to strengthen the SBA direct loan program to enable it to meet the needs of otherwise eligible small businesses that have been unable to obtain financing in the private sector.

The small amount of money available in SBA direct loans hampers qualified minority entrepreneurs who cannot get private-sector financing to maintain or expand businesses.

Recommendation 4.9: Congress should revise the Housing and Community Development Act of 1974, as amended, to strengthen the targeting provisions of the Community Development Block Grant Program and to provide for greater concentration of resources. The amendments should mandate that a certain percentage of the funds be used for economic development activities and that, wherever possible, projects or proposals funded in whole or in part by CDBG should have black equity participation.

Seven years of experience with the Community Development Block Grant program nationally and in Miami demonstrates the need for greater geographical concentration of funds. Such targeting is even more important when budget tightening reduces the amount of available funding. Many of the projects that have been funded have improved the capital infrastructure of communities but have not produced adequate economic growth.

Recommendation 4.10: Congress should amend Federal laws to give local governments the flexibility to direct Federal funds and assistance designated for minorities and women to eligible groups in proportion to each group's degree of economic need within the local jurisdiction.

Many Federal laws recognize that several groups of people in society have suffered discrimination and are in need of special assistance to remedy its effects. In large cities such as Miami, however, competition between eligible groups has resulted in proportionately smaller shares of the benefits for those groups most in need and least able to compete. As available Federal monies decrease, it is important for local communities to have the necessary flexibility to target Federal programs to the specific groups in their community with the greatest need.

EMPLOYMENT:

Recommendation 5.1: Public and private employers should develop, implement, or strengthen affirmative action plans designed to open opportunities for blacks in all aspects of the employment market.

As the statistics in this report indicate, blacks remain underrepresented throughout the public and private employment market. The cumulative effect of contemporary discriminatory employment, housing, and educational practices perpetuates historical patterns of racial exclusion in Dade County's job market. Both public and private sector employers should undertake immediate and sincere efforts to identify and eliminate those employment practices that deny blacks equal employment opportunity.

Indeed, the City of Miami is under court order to take affirmative steps to overcome the historical employment and promotion practices that denied opportunities to minorities in public sector employment. The city has gone beyond the court's mandate, voluntarily expanding this affirmative action plan by municipal ordinance. Private employers also should make voluntary efforts to eliminate discriminatory practices and processes.

Recommendation 5.2: The public sector in Miami should reinforce the gains of minorities, particularly blacks, in entry- and mid-level positions and should take new initiatives to recruit, train, and employ black workers in positions of greater authority, responsibility, and remuneration.

As a result of efforts to overcome discriminatory employment practices, blacks and other minorities have entered the public sector work force in increasing numbers. These employment gains, however, seldom go beyond entry- and mid-level positions. Efforts to eliminate discrimination in upper administrative and managerial positions should continue until discrimination is eliminated throughout the public sector work force.

Recommendation 5.3: The Federal Office of Personnel Management should provide technical assistance and oversight to ensure that all Federal government agencies located in Miami devise and implement the affirmative action plans required of them by Federal law.

The law requires each Federal agency to develop plans for recruiting additional minorities and women when they are underrepresented in the agency's work force. Nevertheless, many Federal agencies in the Miami area have not developed such plans. As the ultimate authority responsible for ensuring equal employment opportunity, the Federal government should take the lead by overcoming its own discriminatory employment practices. The Office of Personnel Management should review the performance of all Federal agencies in the Miami area and assist the agencies that have not yet developed minority recruitment plans to do so.

Recommendation 5.4: Private employers of all sizes must analyze their employment practices to validate bilingual employment requirements and change those practices not required as business necessities so as not to bar black workers from employment and advancement.

The process of discrimination can be eliminated only by identifying the practices that work to support discrimination and adopting a systematic organizational effort that comprehensively responds to those problems. Such an affirmative action plan would include realistic objectives for dismantling discriminatory processes and also would include plans for achieving the goals. Some of the specific measures would take account of race, while others need not. Specifically neutral employment practices should be changed if they operate to deny equal employment opportunity to blacks. For example, a non-related job requirement that employees be bilingual, even if applied similarly to black and white job applicants, may be discriminatory if most blacks are monolingual. Indeed, the Commission received testimony that some employers have imposed a bilingual requirement as a way to avoid hiring blacks. Regardless of the intent of such a requirement, it should be eliminated unless it is a bona fide business necessity.

Recommendation 5.5: The private sector in Miami must take the lead to provide entrance level job skills to black youth.

It is clear from the hearing record that Miami's private sector accepts no responsibility for the predicament of a large number of Miami's black youth. None of the private sector witnesses at the Commission's hearing expressed a willingness on the part of their industries to go beyond simply rejecting black job applicants because they lack minimal skills. It is not enough to say that the school system has failed. The private sector has more resources than any other segment of the community. In order to make inroads into solving this problem, the business community must be willing to do more than the law requires and combine its business judgments with a sense of social responsibility.

Recommendation 5.6: The Federal government should ensure that any successor job training programs to the Comprehensive Employment and Training Act (CETA) include sufficient resources to train blacks who lack minimal entry level skills.

The Comprehensive Employment and Training Act is scheduled to expire at the end of fiscal year 1982. The current Administration's proposed successor to CETA, the Job Training Act of 1982, plans to transfer responsibility for program management to the states and the private sector. Transferring of federal control could threaten the existence of many of the training programs once earmarked for those blacks who do not possess even minimal entry level job skills. Moreover, in the public sector employment and training areas exacerbate the difficulties unskilled blacks must surmount.

The public and private sectors must make a sincere commitment to provide job training and placement for the unskilled. Otherwise, unskilled blacks will find themselves without opportunity or hope of ever securing gainful employment.

JUVENILE JUSTICE:

Recommendation 6.1: The Dade County Public Schools and the Florida Department of Health and Rehabilitative Services should make a coordinated effort to identify potentially delinquent behavior as early as possible.

Schools are often the first place children exhibit delinquent or potentially delinquent behavior. DCPS should encourage teachers and counselors who identify possibly delinquent students to refer them (and their families) to HRS for counseling. More intensive counseling at an earlier age could deter the possibility of delinquency, which usually becomes stronger as the child ages. HRS and DCPS should coordinate their efforts to encourage a child to work toward building a more productive way of life.

Recommendation 6.2: The Florida Department of Health and Rehabilitative Services should operate additional group homes, because placing juvenile offenders in State training schools results in minimal rehabilitation.

Group homes, by virtue of their small size, offer not only more individualized attention, but also provide a more "home-like" atmosphere. Often, juvenile delinquents have very poor home environments. Placing these children in more desirable living situations may help to deter delinquent behavior by giving the juveniles the opportunity to work through their problems and to assess the value of leading a more productive life.

Recommendation 6.3: The Florida Department of Health and Rehabilitative Services should provide more intensive counseling not only to juveniles, but to their families as well.

Counseling juveniles who exhibit delinquent behavior can be effective in some instances. Counseling should help juveniles to cope with their environments. To be most effective, the services should extend to the families, as well. One cannot place a juvenile in a rehabilitation program and expect lasting results if the child is returned to the same environment that contributed to the delinquency. To deter further delinquent behavior requires more intensive effort to involve families, not just juveniles, in counseling.

ADMINISTRATION OF JUSTICE:

Recommendation 7.1: The Dade County State Attorney's Office, together with the Dade County Public Defender's Office and the Chief Judge of the Eleventh Judicial Circuit, should establish a committee to identify racially discriminatory policies within Dade County's criminal justice system and recommend steps for removing them.

The exclusion of blacks from juries, particularly in cases in which the issues are racially sensitive, has contributed to the widely-held perception that blacks do not participate meaningfully in the administration of justice in Dade County. In addition, racial disparities in sentencing, an issue that the grand jury began studying in 1980, reinforce the image of a dual system of justice and should be included in the study.

Recommendation 7.2: The Community Relations Service of the Department of Justice should facilitate the creation of the committee described above and should provide appropriate technical assistance.

The Community Relations Service (CRS) is empowered to assist public and private agencies and organizations in alleviating problems that cause friction between racial and ethnic groups. Such assistance can include providing resource materials and models to show how other communities have resolved difficulties relating to discriminatory practices. The CRS should assist in creating the committee and closely monitor its work throughout the process of formulating the ultimate recommendations.

Recommendation 7.3: The State Attorney's Office should adopt written statements that clearly delineate its policies and procedures governing the conduct of plea negotiations and the instituting of criminal charges.

Clear and unequivocal policies would provide a foundation on which to base decisions, serve as notice of what constitutes unacceptable practices, and enhance the credibility of the office both within the community and among other actors in the justice system. The first statement should identify the factors that the Office considers when entering into and concluding plea negotiations and should require its attorneys to make all such factors known to the presiding judge and to enter them into the court records of the case. The second should clearly reflect the criteria for presenting cases to the grand jury, as opposed to directly filing them, and should provide for the expeditious handling of all charges by the Office. Both written statements should also be available to the public.

Recommendation 7.4: The State Attorney's Office should adopt a written policy that is committed to ethnically and racially diverse juries and that forbids assistant state attorneys to make peremptory challenges on the basis of a potential juror's race.

The continuing problem of all-white juries hearing cases, particularly when they are racially sensitive, perpetuates the perception of a dual system of justice. The State Attorney's Office's failure to clearly prohibit the practice of excluding potential jurors on the basis of their race is a major factor in minority dissatisfaction with the justice system. The adopted policy should specify the administrative action that would result from violation.

Recommendation 7.5: Police department officials from both the Miami Police Department and the Dade County Public Safety Department as part of their Affirmative Action Plans should continue efforts to hire minority officers, particularly black officers, so that both forces ultimately reflect the composition of the community they serve.

The Commission has long advocated that law enforcement agencies reflect the communities they serve because a representative force enjoys improved relations with its community, gains its respect and trust and, consequently, functions more effectively. Merely hiring additional minority officers but denying them the opportunities to assume increasingly higher-level policy and command positions, however, will not allow the departments to realize fully the benefits of improved relations with their communities. Minority officers should hold a reasonable proportion of supervisory positions.

Recommendation 7.6: The State Attorney's Office as part of a comprehensive Affirmative Action plan should continue its efforts to hire more minority attorneys, particularly black attorneys, and the Public Defender's Office should develop and implement an affirmative action plan so that both offices ultimately reflect the composition of the communities they serve.

Prosecutors and defense lawyers are key officials in the criminal justice system. They are often the most visible representatives of the system during a widely-publicized trial and, by virtue of the discretion and judgment they exercise, are among the most important. In order to dispel the widely-held perception that it is a white system that metes out justice to minority defendants, both offices should work to improve their efforts to hire minority attorneys. Minority attorneys also should have equal opportunity to compete for supervisory positions.

Recommendation 7.7: The Miami Police Department and the Dade County Public Safety Department should closely monitor the implementation of policy and procedures governing internal investigation of alleged police misconduct to ensure strict adherence to the guidelines, to evaluate the reviewing systems' adequacy, and to adopt such necessary and appropriate changes to assure the effectiveness of the process.

Criticism of the criminal justice system in Dade County has raised serious doubts about its ability to deliver equal justice. Although subject to various procedural and substantive strictures, each component of the justice system possesses enormous discretionary authority. It is important to review that authority and take steps to preclude abuses of discretion. Immediate, concrete, and identifiable actions that provide for the prompt receipt and investigation of civilian complaints, the development of a system to identify violence-prone officers, and the fair, swift, and consistent imposition of disciplinary sanctions when allegations of wrongdoing are sustained would publicly demonstrate a commitment to fair and equal justice.

Recommendation 7.8: Psychological testing that screens applicants unsuited for police work but is not racially discriminatory should be an integral part of the selection process.

The Commission believes that psychological screening for all police recruits is valuable to enable a department to screen out candidates predisposed to violence or racism and those who may not be able to perform under the rigorous physical, mental, and emotional stress of police work. The screening mechanisms Dade County used, however, were not entirely appropriate. The new assessment center should facilitate the development of techniques and instruments that can identify unsuitable applicants without being racially discriminatory.

Recommendation 7.9: The Dade County Public Safety Department should review the purpose and functions of its Citizen Advisory Committees and issue a written policy statement delineating how the committees are to operate and should devise and implement a training program for the Citizen Advisory Committees to enable them to fulfill their tasks.

A systematic training program that fully informs the advisory committees of departmental policies and procedures, based upon a mutual understanding of the committees' responsibilities, would enable the advisory committees to develop a practical agenda. For example, advisory committees should be familiar with departmental procedures governing the internal investigation of complaints against officers before an incident occurs, rather than be briefed on those procedures after an incident has aroused community concern.

Recommendation 7.10: The Public Safety Department and the County government should respond in writing promptly and systematically to all written recommendations or requests for information from the Advisory Committees.

A routine procedure ensuring that appropriate authorities respond to advisory committee recommendations and expressions of concern could allay suspicions that the authorities ignore such communications.

Recommendation 7.11: The Miami Police Department should follow the lead of the Public Safety Department and establish similar permanent representative neighborhood committees to create an avenue for open communication between MPD and the community it serves.

Having individuals who represent a cross-section of the community participate in a police department's prescribed activities enhances that department's credibility within the community. It also can help to dispel the perception that the police department operates as a closed, semi-secret organization, unresponsive to civilian concerns.

Recommendation 7.12: Training programs should emphasize police work's service aspect because it is important and consumes the majority of an officer's time.

Expanding all aspects of police training would improve the performance of individual officers. The Human Skills component of the Institute for Criminal Justice curriculum, in particular, requires stronger administrative controls to ensure that the material is, in fact, taught. Courses in human relations, including an awareness of differences in ethnic behavior and race relations, need to be expanded so that trainees otherwise unfamiliar with the neighborhoods they will be policing are prepared adequately to perform their duties.

Recommendation 7.13: The Independent Review Panel should have the means to fulfill its task, including subpena power and guarantees of adequate independent investigative resources, as the Panel determines necessary.

The history of external civilian review of police misconduct is spotty. There are numerous reasons that efforts to establish such review have failed in cities around the country. The Commission has found, however, that failure to provide such boards with tools to fulfill their tasks has been one of the principal reasons for this lack of success. Establishing independent civilian review is an empty gesture if the panel lacks such essential investigative resources as subpena power or investigative staff. Without such resources, it is nearly impossible to develop the professional expertise necessary for success.

APPENDIX A

DADE COUNTY PUBLIC SCHOOLS
ADMINISTRATIVE OFFICE
LINDSEY HOPKINS BUILDING
1410 NORTHEAST SECOND AVENUE
MIAMI, FLORIDA 33132

DR. LEONARD M. BRITTON
SUPERINTENDENT OF SCHOOLS

DADE COUNTY SCHOOL BOARD
MR. PAUL L. CEJAS, CHAIRMAN
MS. JANET McALILEY, VICE-CHAIRMAN
MRS. ETHEL BECKHAM
MR. G. HOLMES BRADDOCK
MS. JOYCE H. KNOX
DR. MICHAEL KROP
MR. ROBERT RENICK

April 30, 1982

Mr. Paul Alexander, Acting General Counsel
United States Commission on Civil Rights
Washington, D. C. 20425

Dear Mr. Alexander:

I am in receipt of your letter of April 14, 1982 which included excerpts from the report the U.S. Commission on Civil Rights prepared on the state of civil rights in Miami. The Commission visited the Miami area and held public hearings during the week of December 8-11, 1980.

I am disappointed with the substance of the report. It incorporates outdated information inasmuch as the hearings were held in the winter of 1980 and even at that time included information from prior years. In addition, the report is now to be released in the spring of 1982, some eighteen months after the testimony.

When the hearings were held in the winter of 1980, the Commission subpoenaed witnesses of its own choice to testify, witnesses who were not always fully knowledgeable to respond. Much of the report is based on testimony taken out of context. While some points are correct, much is responded to in cliches, on obviously limited information, and with an overly dramatic tone.

Little comment has been made of the many minority-oriented programs in place in the winter of 1980 or initiated since then to respond to some of the problems faced then and now. The report appears to be based on preconceived ideas of what is "right", "desired", and "effective", and does not take into account other ways of achieving or surpassing objectives.

Attached you will find responses prepared by staff to statements made in the report in order to clarify misconceptions and correct inaccuracies.

Also attached for your information is a copy of a December 12, 1980 letter I sent Mr. Arthur Flemming, the Commission's Chairman at the time of the hearings. This letter transmitted a copy of another letter sent at that time to Mr. John McMullan, Editor of the Miami Herald. The letter to Mr. McMullan was an attempt to set the record straight in response to a newspaper story detailing statements made by some of the witnesses subpoenaed to appear before the Commission.

Although I saw no reflection of my December 12 correspondence to Mr. Flemming included within the excerpts of your draft report, I share this letter with the Commission again because most of the information in that original correspondence is as true today as it was at that time.

It is this school system's desire and intent to serve each segment of the Dade County community equitably and to prepare well-rounded, educated, and employable citizens who can benefit themselves as well as the community.

In our opinion, it is unfortunate that what could have been a useful analysis is biased in its approach and outdated in its contents. The U.S. Commission on Civil Rights could have been of real service to the people of Dade County. Unfortunately, if the draft report which my office received on April 19 is an indication, it lost that opportunity.

Sincerely,

Leonard Britton
Superintendent of Schools

LB/JF/LM:dm
Attachments

cc: Members of the School Board
Superintendent's Executive Council
School Board Attorney

APPENDIX B

STATE ATTORNEY
METROPOLITAN JUSTICE BUILDING
MIAMI, FLORIDA 33125

JANET RENO
STATE ATTORNEY

TELEPHONE (305) 547-5200

April 15, 1982

Mr. Paul Alexander
Acting General Counsel
United States Commission
  on Civil Rights
Washington, D.C. 20425

Dear Mr. Alexander:

Thank you for the opportunity to comment on pages 64-71, 168-179, 200-212, and 222-244 of a draft of a United States Commission on Civil Rights Report.

At page 69, we would simply point out that the State Attorney's Office was not adequately funded at the time to provide for sufficient resources to fulfill its general prosecution function and that its allocation of resources to enforcement of minimum housing standards was based on what it had, not what it considered proper.

At pages 172-73, you conclude that "the rate of juvenile crime has not dropped significantly since the 1978 amendments were enacted...." You cite no authority so I would point out that contrary to the conclusions drawn in the draft, the Uniform Crime Reports issued by the Department of Law Enforcement of the State of Florida indicate that juvenile crime is decreasing as evidenced by arrests.

The publications "Crime in Florida, 1979-81 Annual Reports", relevant portions of which are attached, reveal the following arrest data for those aged under 18:

	1979	1980	1981
Part I Offenses	51,263	51,799	45,585
Part II Offenses	49,475	43,440	37,952
Total	100,738	95,239	83,537

This has occurred despite a dramatic increase in crime during the same period.

Additionally, 1981 amendments (attached) to the Florida Statutes have broadened the power of the State Attorney to file direct felony informations (Section 39.04) and to detain juveniles (Section 39.032). We expect these amendments to further reduce the incidence of juvenile crime.

At page 200, et. seq. of the draft, you described the case involving Nathaniel LeFleur. You furnish only Mr. LeFleur's version. You take this version from the Citizen's Committee Report and the Miami Herald. If you are going to do a solid documentation of community problems, I urge you to go to the Court record and the actual transcript of testimony of people involved. I urge you to present the police view as well. When the police attempted to execute the warrant they did not know they were at the wrong house. They knocked on the door and told Mr. LeFleur it was the police. Mr. LeFleur knew it was the police. He did not know that the search warrant was incorrect. Without giving the police an opportunity to present the warrant and to determine that they were at the wrong address, he himself said that he slammed the door and locked it in their face. To present all sides of the question, I respectfully suggest you cite the Grand Jury Report, a copy of which is enclosed, or take testimony from the witnesses themselves. Finally, I urge you to refer to the verdicts of a biracial jury in the civil action filed by the LaFleurs, copies of which I enclose. Certainly the Civil Rights Commission should not rely on newspaper clippings as the source to present what actually happened in a very sensitive community matter. To do so will only exacerbate community tensions and will not present the full and clear picture.

With respect to the case involving Trooper Jones beginning at page 202, et. seq. of the draft, you rely only on the Citizen's Committee again plus one excerpt from a transcript. I would point out to you that the Citizen's Committee did not hear from the actual witnesses in this case. It, as the Civil Rights Commission has done, heard only superficial second hand testimony. If you are going to present these cases and describe what happened, then hear the witness or at least read all the testimony and make a judgment. To rely on newspaper clippings and a superficial tribunal is to perpetuate the perceptions of racism and injustice that we assume the Commission is trying to erase.

The quote from Judge Gordon at pages 202, et. seq. is partial and taken out of context. The full transcripts of that particular hearing and the hearing of March 14, 1979, are attached and should be included to understand that the State Attorney's Office had not made a representation that could "smack of racism".

What you fail to point out at page 202, at pages 233-34 and at pages 237-38, is that the State prior to July 1, 1979, refused to negotiate a plea to no jail time (in custody treatment) because it did not think the statute authorized a commitment to the mentally disordered sex offender program unless the offender was incarcerated. Judge Gordon followed the same view in the Spring of 1979 and the defendant refused to plead guilty.

The statute was subsequently amended effective July 1, 1979 so that incarceration was not a mandatory condition of commitment to the sex offender program. The amendment occurred between the time Judge Gordon heard the case and the time Judge Levy imposed sentence. Contrary to your finding at page 204, Judge Levy was aware of prior plea negotiations as indicated in the transcript of the hearing of April 6, 1979, which is attached.

As for the Acting State Attorney's report, it is full of factual errors and was so superficially done that the State Attorney was not even interviewed concerning the handling of the case nor was she given an opportunity to be heard on the issues raised by the Acting State Attorney.

With respect to the Randy Heath case beginning at page 205, et. seq., I would hope that you would include what action was taken by the United States Attorney for the Southern District of Florida. We understand that he and the Justice Department sought an indictment in this case and that a Federal Grand Jury refused to indict.

With respect to Dr. Jones at page 207, et. seq., you should include the fact that we took unusual steps to insure that we did not unjustly charge Dr. Jones including requiring the State's prime witness to take a polygraph. Note also, that Dr. Jones admitted on the stand in the second trial that he took thousands of dollars for his own private use from a person doing business with the school system.

At page 212 of the draft you state "What remained was a criminal justice system incapable of clearly condemning excessive physical force against black citizens..." By that statement you seem to imply that the officers in LaFleur should have been charged and convicted of something; that the sentence in the Willie Jones' case was inappropriate; and that the officer in the Randy Heath case should have been charged and convicted of something. If that is what you are saying, then you should support your conclusions with the law, the evidence and sentencing information. If you are only talking about perceptions, I respectfully suggest you state "What remained was a criminal justice system which some perceived to be incapable of clearly condemning excessive physical force...."

With respect to preemptory challenges, your review is at best superficial. You cite Mr. Long and Mr. Brummer as authorities for the fact that prosecutors systematically exclude blacks. Yet, you do not cite one case in which they support their bare allegation.

Please ask them to furnish specific examples to support their statements so that we might intelligently respond. To perpetuate the bold, unfounded assertions of two of the prosecutor's principal adversaries is to perpetuate the half truths and inaccuracies you should be trying to dispel. The issues involved in jury selection are critical and sensitive and you do not do justice to it in this draft.

At page 244 of the draft you note that a judge was critical of the jury selection process in a case. You fail to note that the State Attorney then appeared before the Court stating she recognized the need for a jury "totally representative of the community" and stating "it is extremely important in this case that there be no appearance" of racially motivated use of peremptory challenges. Furthermore, to remedy the situation, the State volunteered that jury selection be started again and announced that the prosecutor would voluntarily state for the record the reasons for use of peremptory challenges. This action of the prosecutor has never been required by law in Florida. A jury that included a black person was ultimately selected and it convicted the defendant.

You conclude this portion of the draft at page 244 with the statement, "The perception endures that a dual system of justice operates in the country . . . one for whites and one for blacks." It will continue to do so as long as the issues raised are presented superficially and without thorough investigation and documentation.

Sincerely,

Janet Reno

JANET RENO
State Attorney

JR:jw

Enclosures

APPENDIX C

METROPOLITAN DADE COUNTY, FLORIDA

METRO-DADE

INDEPENDENT REVIEW PANEL
DADE COUNTY COURTHOUSE
73 W. FLAGLER STREET
ROOM 1902
MIAMI, FLORIDA 33130
(305) 579-4880

Panel Members
Neal R. Sonnett, Chairman
Chief John Fletcher, Vice Chairman
James E. Fayson
Dewey Knight
Dr. Ivette Arteaga Morgan
Linda Goodridge Steckley

Executive Director
Jeffrey L. Berkowitz
(305) 579-4882

Administrative Assistant
Suzanne J. Martin

April 13, 1982

Paul Alexander, Esquire
Acting General Counsel
United States Commission on Civil Rights
Washington, D.C. 20425

Re: Report of the United States Civil Commisson on the state of Civil Rights in Miami

Dear Mr. Alexander,

This letter shall serve to acknowledge receipt of your correspondence dated March 23, 1982 concerning the above-referenced matter, in which you enclosed an excerpt from the portion of said report which addressed the undersigned's testimony relative to Dade County's Independent Review Panel. I have reviewed the excerpt and have given a good deal of consideration to its contents.

In order to present a balanced and fair view of the past achievements, present status and future potential impact of the Independent Review Panel, it is my opinion that the report needs minor modification to reflect certain matters which have occurred subsequent to the Commission's hearings in Miami. This letter shall include my comments concerning the issues raised in the Commission's report, in addition to an overview of the Independent Review Panel's achievements during its first two years of operation.

The Panel's first and second year statistics are interesting, if not surprising. During the first two years, from April 17, 1980 to April 9, 1982, the Independent Review Panel received a total of two hundred and ninety four complaints. Despite the media focus on the Panel as a police review board, only thirty five percent (35%) of the complainants alleged some level of level of misconduct on the part of officers of the Metro-Dade Police Department. The ethnic background of the complainants reflected the fact that dissatisfaction with the police, as expressed to the Panel, was not limited to a single ethnic group. Thirty eight percent (38%) of the complainants were black, forty eight percent (48%) white or non-Hispanic and six percent (6%) were Hispanic (ethnicity was unknown in eight percent (8%) of the cases).

While the Civil Rights Commission is correct in noting that the Panel's jurisdiction extends to all county employees and agencies, this expanded jurisdictional base has proven beneficial in ameliorating police resistance to the Panel's existence, objectives and efforts. Potential critics are not in a position to claim that the police are being singled out for closer civilian review of alleged misconduct, while all other county agencies and employees might otherwise be immune to the same. The Panel has had occasion to review in great detail and to conduct public hearings on numerous cases involving allegations against members of Dade County's police department to date. The relative comprehensive nature of police internal review investigative reports, which are reviewed and discussed in great detail, provide the Panel staff as well as the Panel members with the opportunity to achieve the specific expertise in police reviews that the Commission suggests is lacking. In addition, members of the present Panel include a municipal police chief, who is currently the president of the Dade County Association of Chief's of Police, and a very prominent criminal defense counsel, who was previously the chief trial counsel for the United States Attorney's Office. The undersigned has background in successfully pursuing federal civil rights cases relating to abuse of police power. Therefore, the specific police expertise is present and is tempered by the lay members of the Panel, whose sensitivities and sense of justice are more reflective of the community as a whole.

Public Awareness

Forty three percent (43%) of the complaints received were directed at a wide variety of Dade County non-police agencies and employees. Eighteen percent (18%) of the complaints involved various municipal police departments and Florida State law enforcement agencies, over which the panel has no jurisdiction. As the Commission correctly notes, the significant number of complaints against municipal police departments demonstrates a lack of understanding on the part of the community of the scope and extent of the panel's authority and power.

In an effort to improve the community's awareness of the Panel's existence and authority, the Panel has embarked on an extremely successful public relations campaign which has included public service announcements being aired on a regular basis on all of Miami's television stations and a number of local radio stations. The Panel is now receiving an average of forty to fifty complaints a month, and almost one-third of the same involve allegations concerning the conduct of officers of the Metro-Dade Police Department. This is not to imply that a significant portion of the police complaints involve allegations of excessive use of force as we are continuing to experience a significant portion of police complaints relating to alleged verbal abuse and minor harassment.

Legal Resources

With respect to the suggested absence of legal resources, both the undersigned and one Panel member are attorneys and the Panel has the benefit of representation of an assistant county attorney who has been assigned to the Panel from its inception. I am confortable that the Panel has access to more than sufficient legal talent to serve all of its present and potential needs.

Staff Assistance

I think it is important to note the significant progress that has been achieved with respect to staff assistance following my testimony before the Commission. While I have been quoted accurately in the excerpt from the report, an extremely qualified administrative assistant was hired shortly following my appearance before the Commission following an arduous selection process involving approximately one hundred fifty particularly well-qualified applicants, including a number of lawyers. I might add that I was afforded complete autonomy during the selection and hiring process.

Discussions are currently ongoing with the appropriate governmental officials relative to my request that I be replaced by another executive director who will be in a position to serve on a full-time basis. Preliminary conversations with a number of officials have indicated that this might be accomplished in the near future. The chief judge, who is responsible for the appointment of the Panel's executive director, is extremely cooperative and is cognizant of the need to have the Panel properly staffed by an individual who commands a great degree of community respect and is otherwise capable and qualified to discharge his or her responsibilities.

Investigative Staff

On numerous occasions, we have utilized the services of private investigators, hired out of the community directly by the Independent Review Panel, and paid directly from the Panel budget. We have thus avoided the necessity of potentially comprising our autonomy by having to request the same from the county manager, who has continually expressed a willingness to provide the Panel with whatever investigative assistance the Panel deems necessary.

Subpoena Power

The issue of subpoena power has never been fully resolved, nor have we attempted a community-wide effort to implement the same. It is worthy of note, however, that the Panel has just completed its first expanded panel reviews in three separate investigations involving allegations of police misconduct. Notwithstanding the lack of subpoena power and the reticence on the part of the Metro-Dade Police Department to compel its officers to testify, four of the five accused police officers, together with other police witnesses, came forward voluntarily to testify at the public hearings when requested to do so by the Panel. If the Panel is to achieve its stated goals, primarily the goal of improving police-community relations, continued voluntary cooperation by the department and its officers remains the only alternative to subpoena power. It is my personal belief that the legal and political implications inherent in the efforts to obtain subpoena power would be counter-productive to the police department's efforts to improve its own image and might serve to diminish the respect of the community which the department has been striving hard to regain. Yet, I will not hesitate to seek subpoena power in order to preserve the ability of the Panel to fairly and fully discharge its responsibilities to the community.

Conclusion

The Panel has chosen to conduct its investigations quietly but thoroughly. The objective has been to foster improved police-community relations by patiently discussing all aspects of a complaint with the complainant and then working with the Metro-Dade Police Department in an effort to mediate the dispute in order that misunderstandings can be minimized and problems caused by failures of communication rectified. This approach is rewarding in that the real problems are addressed and in many cases resolved to the satisfaction of both the complainant and the accused employee or agency.

I am comfortable in the knowledge that we have discharged our responsibilities in a manner consistent with our initial pledge to conduct impartial and fair reviews of Internal Review investigative files and to publicly recognize and acknowledge, when justified, the quality and consistency of Internal Review investigations.

In my opinion, the quality of the investigative efforts by the Metro-Dade Police Department's Internal Review Section under the present administration has been admirable, a fact which can be attributed both to the dedication and professionalism of the Internal Review Section and to the fact that each such investigation is conducted with the knowledge that the entire file may be scrutinized by the independent civilian board or by the media. In many of the cases, while the Panel was satisfied that conduct of the officer was proper under the circumstances, it identified certain weaknesses or inadequacies in general departmental policies and procedures. In each such event, the Panel's recommendations for corrective measures were graciously received by M-DPD Director Bobby Jones and implemented without delay.

In general, the police community has been extremely cooperative, a fact which I attribute, at least in part, to the respect and credibility earned by the Panel in its brief two years of existence after having established our ability to conduct investigations in a fair, unbiased and objective manner.

In summary, I feel that continued vigilence will ultimately reestablish the credibility of our police and will enable the department to regain the respect and admiration of the citizenry which is critical if we are to successfully wage a cooperative battle against crime and violence in Miami.

Very truly yours,

INDEPENDENT REVIEW PANEL

BY
JEFFREY L. BERKOWITZ
Executive Director

JLB:c's

APPENDIX D

City of Miami

KENNETH I. HARMS
Chief of Police

April 26, 1982

Mr. Paul Alexander
Acting General Counsel
U. S. Commission on Civil Rights
Washington, D. C. 20425

Dear Mr. Alexander:

Please be advised that I have received and reviewed the excerpts from the U.S. Commission on Civil Right's report which addresses the state of civil rights in Miami and which you forwarded to me for comments. I appreciate the extension granted through April 29, 1982 for the submission of my comments.

It is with deep regret that I view this report which only reflects the negative aspects of police-minority community relations within this community. Enclosed please find my detailed comments on various portions of the report.

In addition, the following general statements are presented which apply to the report in its entirety:

1. Like so many previous reports, this document makes many allegations and charges with little, if any, factual documentation. Rather than investigating the state of minority affairs within Miami, the U.S. Commission has accepted the undocumented testimony of other groups, the news media, and individuals representing special interest groups and presented their opinions as fact. In addition, the Commission has made no apparent attempt to document or discard the charges/allegations made.

2. The Commission refers to this document as pertaining to Miami yet constantly uses as examples of police brutality/abuse and discrimination agencies which are not part of the City of Miami local government structure. The Dade County Public Safety Department

is mentioned throughout this report although it does not provide any direct law enforcement services within the City of Miami.

The title of the report should be changed to appropriately reflect the jurisdiction under study or, if it will remain the Miami Report, all references to non-Miami agencies should be deleted.

3. The report presents a narrow view of minority relations by only discussing the Blacks while totally avoiding other minority groups within the City of Miami. Specifically, the largest ethnic group within Miami - Hispanics - are not dealt with at all.

4. The overall tone of the report is characterized by undocumented inuendo and only serves to further alienate the Black community and law enforcement by only pinpointing the negative aspects of their relationship without including some of the successes which have been experienced over the past four years since I took office as Chief of Police.

In conclusion, I am totally opposed to the finalization and release of this report as presently drafted since it can only serve to alienate the Miami Police Department from the minority communities it serves. As written, this report is destructive and erroneous. I suggest that you report the facts, not hearsay, and attempt to relate the accomplishments to date and recommendations for further action.

If you have any questions concerning this correspondence or any of the attached materials, please do not hesitate to contact me.

Sincerely,

Kenneth I Harms
Kenneth I. Harms
Chief of Police

KIH:mp
Enclosures

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